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In The
Supreme Court of the United States

NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

EVON BILLUPS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Court of Appeals upheld the validity of the 2006 Georgia Photo ID Act on the ground that, "*Anderson* [*v. Celebrezze*, 460 U.S. 780, 789 (1983)] does not require any evidentiary showing or burden of proof to be satisfied by the state government ... Nor do the more recent decisions in *Burdick* [*v. Takushi*, 504 U.S. 428, 434 (1992)] and *Crawford* [*v. Marion County Board of Elections*, 553 U.S.___, 128 S. Ct. 1610 (2008)] place an evidentiary burden on the state when defending a voting regulation." 554 F.3d 1340, 1353 (11th Cir. 2009) (emphasis added).

Does this ruling,

1. obliterate the well-established distinction between the heightened standard of review that applies to statutes that infringe fundamental rights protected by the First and Fourteenth Amendments, and the highly deferential rational basis standard of review that applies to other economic or social legislation? and
2. conflict directly with the decisions of this Court (i) in *Crawford v. Marion County Board of Elections*, 553 U.S.___, 128 S. Ct. 1619, 1628 (2008), which requires that any burden on the right to vote '[h]owever slight [,] ... be justified by relevant and legitimate state interests," (emphasis added), (ii) in *Norman v. Reed*, 502 U.S. 279, 288-89 (1992) in which this Court "called for the demonstration [by the state] of a corresponding interest sufficiently

weighty to justify the limitation" (emphasis added), and (iii) in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) which held that a reviewing court is required to "identify and evaluate the precise interests put forward by the State as justification for the burden imposed" by a photo ID requirement on the right to vote and "determine the legitimacy and strength of each of those interests [and] ... the extent to which those interests make it necessary to burden plaintiff's rights." (emphasis added).

THE PARTIES

The Petitioners are The National Association for the Advancement of Colored People (NAACP), Inc., through its Georgia State Conference of Branches; Eugene Taylor; and Bertha Barrett Young. The following were plaintiffs in the proceedings below until August 24, 2007, and are not Petitioners: Common Cause/Georgia; League of Women Voters of Georgia, Inc.; Central Presbyterian Outreach and Advocacy Center, Inc.; Georgia Association of Black Elected Officials, Inc.; Georgia Legislative Black Caucus; Concerned Black Clergy of Metropolitan Atlanta, Inc.; Tony Watkins; and Clara Williams.

The Respondents are Ms. Evon Billups, Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County and the City of Rome, Georgia; Ms. Tracy Brown, Superintendent of Elections of Bartow County, Georgia; Mr. Gary Petty, Member of the Board of Elections and Registration of Catoosa County, Georgia; Ms. Michelle Hudson, Member of the Board of Elections and Registration of Catoosa County, Georgia; Ms. Amanda Spencer, Member of the Board of Elections and Registration of Catoosa County, Georgia; Cathy Cox, former Secretary of State of Georgia and former Chair of the Georgia Election Board in her individual capacity; Karen C. Handel, individually, and in her official capacity as Secretary of State of Georgia and Chair of the Georgia Elections Board; and the State Election Board. All Respondents were defendants below.

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OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit was filed on January 14, 2009, is officially reported at 554 F.3d 1340, and is reproduced in the appendix (App. 1a-29a).

The District Court granted three preliminary injunctions. Two of the opinions of the district court are officially reported in *Common Cause v. Billups* (*Common Cause I*), 406 F. Supp. 2d 1326 (N.D. Ga. Oct. 18, 2005) (reproduced at App. 30a-141a), *Common Cause v. Billups* (*Common Cause II*), 439 F. Supp. 2d 1294 (N.D. Ga. July 14, 2006) (reproduced at App 142a-282a). The third opinion, dated September 15, 2006, *Common Cause v. Billups* (*Common Cause III*), is unpublished and reproduced in the appendix (App. 283a-315a). The final opinion of the District Court which dismissed the complaint for want of standing and alternatively ordered the entry of a final judgment in favor of defendants on the merits is reported in *Common Cause v. Billups* (*Common Cause IV*), 504 F. Supp. 2d 1333 (N.D. Ga. Sept. 6, 2007) and is reproduced in the appendix (App. 316a-420a).

JURISDICTION

The judgment of the circuit court sought to be reviewed was entered on January 14, 2009. This petition is timely under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.1 because this petition is being filed within 90 days of the entry of the judgment sought to be reviewed. This court has jurisdiction to review the judgment of the Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION

The statutory provision involved is the 2006 Georgia Photo Identification Act. O.C.G.A. § 21-2-417.1; 2006 Ga. Laws, p. 3. The Act is reproduced in full at App. 421a-424a.

STATEMENT

This case arises out of a challenge under the First and Fourteenth Amendments to the 2006 version of the Georgia Photo ID Act both, on its face and as applied, on the ground that the act imposes a significant and unnecessary burden on the right to vote of the plaintiffs, and of hundreds of thousands of other poor, elderly or disabled registered voters who do not have Georgia driver's licenses, passports or any other approved form of photo identification.

Georgia's 2005 Photo ID Act was repealed after its enforcement was enjoined by the district court. *Common Cause v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005). In 2006, the Georgia legislature re-enacted the photo ID requirements for in-person voters, but eliminated the $20 fee for a Voter ID Card that had been increased by the 2005 Act.

Neither the 2005 Act, nor the 2006 Act contained any legislative findings or a statement of legislative purpose. In the proceedings below, no members of the legislature or other witnesses testified concerning the purpose of the Act; nor did the state offer any other evidence of legislative purpose. The state also failed to offer any evidence that would permit a court to evaluate the "strength" of the State's interest, to determine why that interest made it "necessary" to burden the right to vote of petitioners and hundreds of thousands of Georgia voters, or to explain why the legislature thought it was necessary to impose a photo ID requirement solely on voters who vote in person, while imposing no comparable requirement for absentee ballots that have been a persistent source of fraud.

The petitioners contended at trial that once they proved that the Photo ID Act imposed *some* burden on their First Amendment rights to vote, they had carried their initial burden of proving that the Act was presumptively unconstitutional, and that the burden of production then shifted to the state to come forward with admissible evidence that (1) the photo ID Act was adopted to serve a legitimate state interest, (2) that the state's interest was not only legitimate, but of sufficient "strength" to both justify and outweigh the burden imposed by requiring the hundreds of thousands of poor, elderly and disabled citizens who are lawfully registered, but do not have driver's licenses or means of transportation, to make a special trip to the County registrar's office to obtain a Voter photo ID, and (3) that the state's interest made it "necessary" to burden plaintiff's rights. There was an abundance of evidence of record that the photo ID requirement was unnecessary and was not drafted to prevent the kind of fraud that was known to exist in Georgia. *See* pp____ below. None of this evidence was rebutted by the State.

The district court's ruling. The district court ruled that the state had no burden to prove that the new photo ID requirement was adopted to serve a legitimate state interest, rather than the purely partisan interests of the Republican-dominated legislature. The court acknowledged that "plaintiffs contend that the State Defendants have not proffered admissible evidence as to the interest supporting the 2006 Photo ID Act." The court ruled, however, that state was not required to produce any evidence that the Act was intended to serve a legitimate state interest and that the petitioners had the burden of proving that the Act was *not* so intended. *Common Cause/Georgia v. Billups*, 504 F. Supp. 2d 1333, 1381 n.8 (N.D. Ga. 2007). The court ruled in the alternative that "the evidence in the record is sufficient to support a finding that the State Defendants introduced the 2006 Photo ID Act in an effort to prevent fraud in voting" (*Id.*) without, however, pointing to any evidence to support this finding.

Although the district court discussed the sliding scale standard in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), the court did not apply this standard. Instead, it ruled that requiring voters who cannot drive to make a special trip to the county registrar's office to obtain a photo ID, was not a "severe" burden because it did not *prevent* them from voting. *Common Cause*, 504 F. Supp. 2d at 1380-81.

Having ruled that the burden on petitioners' rights was not "severe," the district court ruled that "the appropriate inquiry is whether the Photo ID requirement is *rationally related* to the interest the State seeks to further – preventing fraud in voting." Applying this standard, the district court found "that the Photo ID requirement is *rationally related* to that interest." *Id.* at 1381, ¶ 46 (emphasis added).

The Ruling of the Court of Appeals. The Court of Appeals reversed the district court insofar as the district court had ruled that neither the individual petitioners, nor the NAACP had standing (Slip Op. pp. 15-21). The court rejected petitioners' contention that the district court had applied the rational basis standard of review in assessing the merits of plaintiffs' First and Fourteenth Amendment claims. The court said that "although the district court used some language associated with rational basis review ... [t]he district court applied the correct [legal] standard." Slip Op. p. 23.

The Court of Appeals did not directly address petitioners' arguments (1) that there was no evidence in the record to support the district court's finding in footnote 8 that the state had presented admissible evidence that the 2006 Photo ID Act had been enacted to prevent fraud, and (2) that there was no evidence to show that it was "necessary to burden the plaintiff's rights" (*Anderson,* 460 U.S. at 789; *Burdick,* 504 U.S. at 434), in order to further any legitimate interest that the state might be assumed to have had in preventing fraud. The court ruled instead that:

> *Anderson* does not require any evidentiary showing or burden of proof to be satisfied by the state government ... Nor do the more recent decisions in *Burdick* ... and *Crawford* ... place an evidentiary burden on the state when defending a voting regulation.

Slip Op. p. 24.

Petitioners seek review of this ruling by writ of certiorari.

REASONS FOR GRANTING CERTIORARI

I. The Standard of Review Applied by the Court of Appeals Conflicts with Decisions of this Court.

The ruling of the circuit court – that the state had *no* burden to prove that the photo ID requirement was intended to further a legitimate state interest and that the court could simply *assume,* without evidence, that the purpose of the statute was to prevent fraud – conflicts directly with the standard of review in *Anderson v. Celebrezze,* 460 U.S. 780 (1983), and reaffirmed by a majority of this Court in *Crawford v. Marion County Board of Elections,* 553

U.S.___, 128 S. Ct. 1610, 1616 (2008). The standard of review applied by the circuit court is the equivalent of the *rational basis standard* – or the "novel 'deferential important regulatory interests' standard" advocated by Justice Scalia in *Crawford*. This standard was specifically *rejected* Justice Stevens in the lead opinion (128 S. Ct. at 1616, n.8), and by the three dissenting Justices.

The ruling of the Court of Appeals obliterates the well- established distinction between the heightened standard of review that applies to statutes that infringe fundamental rights protected by the First and Fourteenth Amendments, and the highly deferential rational standard of review that applies when statutes regulating social or economic policies, without infringing fundamental rights or burdening a suspect class, are challenged under the Equal Protection Clause. *See District of Columbia v. Heller*, 553 U.S. ___, 128 S. Ct. 2783, 2818 n.27 (2008) ("Rational-basis scrutiny is a mode of analysis we have used when evaluating laws under constitutional commands that are themselves prohibitions on irrational laws.... *Obviously the same test could not be used to evaluate the extent to which a legislature may regulate a specific enumerated right...*") (emphasis added).

The legal and practical differences between the two standards are enormous and outcome determinative. Statutes that infringe fundamental rights are presumed to be unconstitutional. The state has the burden of proving on the record that the statute was in fact, and not in theory, enacted to serve a legitimate state interest that made it necessary to burden a plaintiff's right to vote or some other fundamental right. *Harris v. McRae,* 448 U.S. 297, 312 (1980) ("It is well settled that ... if a law 'impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.'"); *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) ("[W]e have treated as presumptively invidious those classifications that disadvantage a 'suspect class,' or that impinge upon the exercise of a 'fundamental right."); *United States v. Playboy Entm't. Group, Inc.*, 529 U.S. 803, 816-17 (2000) ("When the Government restricts speech, the government bears the burden of proving the constitutionality of its actions."); *see also Watchtower Bible & Tract Soc'y of N.Y., Inc v. Village of Stratton,* 536 U.S. 150, 170 (2002) ("In the intermediate scrutiny context, the Court ordinarily does not ... supply reasons the legislative body has not given ... [W]e expect a government to give its real reasons for passing an ordinance ...") (concurring opinion); *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 392 (2000) ("[w]e have never accepted mere conjecture as adequate to carry a first amendment burden of proof.").

The opposite rule applies to a statute that regulates "social and economic policy ... that neither proceeds along suspect lines nor infringes fundamental constitutional rights." *FCC v. Beach Communs., Inc.*, 508 U.S. 307, 313 (1993). When such a statute is challenged under the Equal Protection Clause, the legislature is not required to articulate its reasons for enacting the statute. *Id.* at 315. The statute is presumed to be constitutional, and "those attacking the rationality of the legislative classification have the burden 'to negat[e] every conceivable basis which might support it.'" *Id.* at 314-15.

In *Crawford,* this Court held that any burden "that a state law imposes on a political party, an individual voter, or a discrete class of voters ... [h]owever slight that burden may appear ... must be *justified* by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" 128 S. Ct. at 1616 (emphasis added). And in *Norman v. Reed,* 502 U.S. 279, 288-89 (1992), this Court "called for the *demonstration* of a corresponding interest sufficiently weighty to *justify* the limitation." (Emphasis added). The requirement that the state "*justify*" a statute that burdens the right to vote is meaningless, if all photo ID statutes are presumed to be constitutional and the state is not required, as the Eleventh Circuit held, to make any evidentiary showing or to satisfy any burden of proof.

The decision of the Court of Appeals violates the first .principle of the judicial process that the decisions of a court must be made based on *admissible evidence in the record, and not an unproven assumptions or hearsay..*

The decision of the Court of Appeals also conflicts directly with *Anderson v. Celebrezze* which requires that courts resolve challenges to state election regulations by a four-step analytical process that parallels their work in ordinary litigation. 460 U.S. at 789. *Anderson* requires that a court "first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate." *Id.* The plaintiff has the burden of proof on that issue which is an element of Article III standing.

Once the plaintiff carries this initial burden of proving that the state voting regulation imposes a burden injury "however slight" on rights of "a political party, an individual voter, or a discrete class of voters" to vote (*Crawford,* 128 S. Ct. at 1616), the statute or regulation is presumed to be unconstitutional (*Harris v. McRae,* 448 U.S. 297) and the burden of production then shifts to the state to produce admissible evidence to rebut the presumption of unconstitutionality by proving that the burden is "*justified.*"

To prove that the burden is "justified," *Anderson* requires a state to prove, as a matter of *fact*, that the *real purpose* (and not merely the hypothetical purpose) of the statute is to serve a state interest that is both "*legitimate*" and of sufficient "*strength*" to outweigh the burden on the plaintiffs right to vote. In addition, the state must also show that the state's interests "make it *necessary* to burden the plaintiff's rights." *Anderson,* 460 U.S. at 789 (emphasis added). *See Crawford,* 128 S. Ct. at 1616.

Where, as in this case, the state fails to offer any record evidence of legislative purpose, a court has no basis to make the "hard judgments that must be made" (*Anderson*, 460 U.S. at 790) in ruling on the constitutionality of the statute that *Anderson* and *Burdick* require:

(i) The court cannot "*identify* and *evaluate* the interests put forward by the State as justifications for the burden imposed by its rule."

(ii) The court cannot "determine the *legitimacy* and *strength* of each of those interests,"

(iii) The court cannot "consider the extent to which those interests make it *necessary* to burden plaintiffs" rights.

(iv) The Court cannot *weigh* "all these factors [and] ... decide whether the

> challenged provision is unconstitutional."

460 U.S. at 789 (emphasis added).

This case highlights the importance of requiring a state to justify the burden imposed by the photo ID act on petitioners' First Amendment rights by offering concrete, admissible evidence of each of the *Anderson* factors. First, there was an abundance of evidence in the record that the Photo ID requirement was not drafted to prevent the fraud that was known to exist in Georgia. Indeed, the district court specifically found that "the 2006 Photo ID statute, like its predecessor,... does nothing to address the voter fraud issues that conceivably exist in Georgia ... [and that] the State, in theory once again left the field wide open for voter fraud in absentee voting" (*Common Cause II*, 439 F. Supp. 2d at 1350). The district court also found that the photo ID requirement will not prevent fraud even in in-person voting because "a voter who registered fraudulently several years ago now may use his or her fraudulent voter registration application to obtain a Voter ID card, which he or she may use to vote in person." *Id.* at 1339; *see also Common Cause I*, 406 F. Supp. 2d at 1342; *Common Cause IV*, 504 F. Supp. 2d at 1381 n.9.[1]

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[1] The district court even found that "the Photo ID requirement ... likely is not rationally based on [State's] proffered interest of preventing fraud." *Common Cause I*, 406 F. Supp. 2d at 1366. Although the state offered no evidence at any of the subsequent hearings to contradict this finding, the district court backtracked and said that its earlier finding was "speculative." *Common Cause IV*, 504 F. Supp. 2d at 1381 n.9.

Second, the evidence of record also shows both that there was no "special crime problem" involving in-person voting in Georgia (*Watchtower Bible & Tract Soc'y*, 536 U.S. at 169), and that the photo ID requirement was not "necessary." *Anderson*, 460 U.S. at 789; *see Dunn v. Blumstein*, 405 U.S. 330, 353-54 (1972) (A burden is not "necessary" if the so-called evil which the statute is intended to remedy has already been remedied by existing laws and procedures.). Voters were required by existing Georgia law to present one of seventeen forms of identification before being issued a ballot and allowed to vote in person at the polls (1997 Ga. Laws, p. 664-65). The district court found, based on the testimony of Georgia Secretary of State Cathy Cox: (1) that "during her entire tenure ... she had not received a complaint of in-person voter impersonation ... [and] that the system previously in place weeds out opportunities for voter fraud and has been effective." *Common Cause II*, 439 F. Supp. 2d at 1330.[2] *See also Common Cause IV*, 504 F. Supp. 2d at 1356 (¶ 89); (2) "that she knew of no reason why a Photo ID should make a difference or prevent any fraud in the context of in-person voting." *Common Cause II*, 439 F. Supp. 2d at 1331. *See also Common Cause I*, 406 F. Supp. 2d at 1351; (3) that "Georgia also imposes criminal penalties for voter impersonation. most violations ... are punishable as felonies [and] ... no evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud" (*Common Cause I*, 406 F. Supp. 2d at 1351); (4) that unlike the bloated and out-dated voter rolls in Indiana, Georgia's voter registration rolls are maintained on a computerized state-wide database that is purged monthly of the names of voters who have died that is available on a terminal at every polling place (*Common Cause IV*, 504 F. Supp. 2d at 1356-57 (¶ 95)); *Common Cause I*, 406 F. Supp. 2d at 1351). Third, the district court found that:

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[2] The factual findings that were made by the district court at the three preliminary injunction hearings were based on testimony and documents that would have been "admissible at trial" and were a "part of the record" at the trial on petitioners' motion for a permanent injunction and did not have to be repeated. Fed.R.Civ.P. 65(a). The state offered *no* evidence at the final hearing to contradict or rebut any of Secretary of State Cox's testimony in the earlier hearings that would have justified the district court in changing any of its earlier findings.

> [T]he State has a number of significantly less burdensome alternatives available to prevent in-person voting fraud, such as the voter identification requirement previously used [under the 1997 law] and numerous criminal statutes penalizing voter fraud .... Given those available alternatives, the court finds that the state could have avoided placing a severe burden on voters.

Common Cause II, 439 F. Supp. 2d at 1351.[3]

Fourth, the record evidence also showed that the "strength" of any interest the State might arguably be said to have had in imposing an additional level of protection against what is at most a hypothetical risk that a person or a small group of people *might* attempt to impersonate a voter at the polls, was relatively weak when weighed against the effect that a photo ID requirement would have on voter participation on the part of hundreds of thousands of poor, elderly, disabled, and particularly African-American voters who do not have a driver's license or access to a car.

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[3] The district court refused to give any weight to these earlier findings. The court said these findings would be relevant only if it found that the burden on petitioners' rights was "severe" and subjected the act to strict scrutiny when it refused to do so. *Common Cause IV*, 504 F. Supp. 2d at 1381 (¶ 45).

In *Crawford*, this Court held that the fact that the Indiana legislation was adopted by straight party-line vote of the Republican-dominated Indiana legislature, was not, *standing alone*, sufficient to invalidate the statute *because there was record evidence of a non-discriminatory neutral basis for the requirement. Crawford*, 128 S. Ct. at 1624. In this case, there was not only evidence that the Photo ID Act was highly partisan, there was no evidence that the voter registration lists in Georgia were inflated, and were not up-to-date. There was also evidence that the Georgia Act has a disproportionate impact on African-American voters,[4] who are far more likely to vote Democratic that white voters, especially in the South. *See Crawford v. Marion County Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) ("No doubt most people who don't have photo ID are low on the economic ladder and ... are more likely to vote for Democratic than Republican candidates."). The convergence of these additional facts made heightened scrutiny in this case especially necessary. *See Anderson*, 460 U.S. at 793 ("[I]t is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status."); *Anderson*, 460 U.S. at 794, n.16 ("In addition, because the interests of minor parties are not well represented in state legislatures,[5] the risk that the First Amendment rights of those groups will be ignored in legislature decision-making may warrant more careful judicial scrutiny."); *Clingman v. Beaver*, 544 U.S. 581, 603 (2005) (The State is "not a wholly independent or neutral arbiter ... [but] is itself controlled by the political party ... in power, which ... has the incentive to shape the rules of the electoral game.... In such cases, heightened scrutiny helps to ensure that such limitations are truly justified and that the State's asserted interests are not merely a pretext for exclusionary or anticompetitive restrictions.") (concurring opinion).

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[4] *See* p. 15 below.

Because the state offered no evidence of the legislative purpose of the statute, the trial court and the Court of Appeals had nothing to "weigh" against the burden of petitioners' First and Fourteenth Amendment rights. In the absence of such evidence, the lower courts should have entered judgment in petitioners' favor just as a court would in any other case in which a party fails to come forward with admissible evidence to support a claim or defense for which it has the burden of proof. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257-58 (1986).

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[5] This is certainly true of the Democratic Party in Georgia where the office of Governor, Lieutenant Governor, Secretary of State and both houses of the legislature (both U.S. and Senate seats) are held by Republicans.

II. This Case Differs from *Crawford*.

The ruling in *Crawford* is not determinative of the merits of this case because of three material differences between both the procedural posture and substantive evidence of record in this case as compared to *Crawford*. These differences make review of this case by certiorari especially appropriate.

First, *Crawford* was a purely *facial challenge* to the validity of the Indiana Photo ID Act. This factor was determinative from a procedural standpoint and dictated the outcome in *Crawford*, which simply followed the ruling a month earlier in *Washington State Grange v. Washington State Republican Party*, 552 U.S. ____, 128 S. Ct. 1184, 1184 (2008) that "[a] plaintiff can only succeed in a facial challenge by establishing that no set of circumstances exists under which the challenged act would be valid." Citing evidence in the record indicated that "99% of Indiana's voting age population already possesses the necessary photo identification to vote under the requirements" of the Indiana Act (*Crawford*, 128 S. Ct. at 1615 n.6), the majority ruled that "the evidence in the record is not sufficient to support a *facial* attack on the validity of the entire statute." *Id.* at 1615. (emphasis added); and *see Crawford*, 128 S. Ct. at 1623 ("A *facial challenge* must fail where the statute has a 'plainly legitimate sweep.' When we consider *only* the statute's broad application to *all* Indiana voters, we conclude that it imposes only a limited burden on voters' rights.") (emphasis added) (citations omitted).

Unlike *Crawford*, petitioners' challenge to the validity of the Georgia Photo ID Act was not a solely facial challenge. Petitioners challenged the Georgia statute not only on its face, but also *as applied to* *petitioners* and to the hundreds of thousands of *registered* voters in Georgia who do not have driver's licenses (the most commonly available form of Photo ID), or any other form of official Photo ID.

Second, the lead opinion in *Crawford* emphasized that the Indiana photo ID law was justified by the fact that the voter registration rolls in Indiana were badly out of date and were inflated by 41.4% with the name of voters who had died or moved to another state. *See Crawford*, 128 S. Ct. at 1617 ("[E]vidence credited by Judge Barker estimated that as of 2004 Indiana's voter rolls were inflated by as much as 41.4%."). The Court ruled that "the fact of inflated voter rolls ... provide[d] a neutral and non-discriminatory reason supporting the State's decision to require photo identification" (*Crawford*, 128 S. Ct. at 1620), and was "sufficiently strong to require us to reject petitioners' facial attack on the statute." *Id.* at 1624.

The record in this case shows the exact opposite from the record in *Crawford*. The Georgia Secretary of State testified that Georgia's voter registration rolls are up-to-date and are purged monthly of the names of voters who have died or moved to another state. The registration list is maintained by the Georgia Secretary of State in a state-wide computerized database, and is linked to computer terminals at every polling place. *Common Cause IV*, 504 F. Supp. 2d at 1356-57 (¶ 95); *Common Cause I*, 406 F. Supp. 2d at 1357.

Third, the evidentiary record in this case is far more complete than was the record in *Crawford*. The lead opinion in *Crawford* emphasized that "the evidence in the record does not provide us with the number of registered voters without photo identification." *Crawford*, 128 S. Ct. at 1622. The record in this case showed that there were hundreds of thousands of citizens of voting age in Georgia who do not have a driver's license or access to a car.[6]

There was also no record evidence in *Crawford* that a photo ID requirement would have a discriminatory impact on African-American voters, as a group, as compared to white voters. African-American voters in Georgia are much poorer than white voters and do not have access to a car in far greater numbers than white voters. *See Common Cause I*, 406 F. Supp. 2d at 1342 ("17.7 percent of African-American households have no vehicle, as compared to 4.4% of Caucasian, non-Hispanic households in Georgia."); *Common Cause II*, 439 F. Supp. 2d at 1306 ("[T]he median income of Caucasian households in Georgia is almost twice that of African-

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[6] "United States Department of Transportation data indicates that Georgia may have as many as 874,420 citizens of driving age who do not have driver's licenses. [C]ensus data indicate that 390,414 Georgians of voting age and 242,949 Georgia households do not have access to a car .... The Census Bureau further reported that 140,000 African-American households in Georgia, as compared to 89,000 Caucasian households in Georgia, lacked access to a car." *Common Cause II*, 439 F. Supp. 2d at 1306. The Census data is consistent with the comparison *prepared by the State Defendants* of the Secretary of State's database of 5,084,239 registered voters with the names in the Department of Driver Services' database. (Def. Ex. 37 & PX 98). This showed that there are 198,378 registered voters who have never had a Georgia driver's license (*Common Cause IV*, 504 F. Supp. 2d at 1362 (¶ 146)); another 91,048 registered voters do not have a driver's license in their possession that could be used for identification purposes at the polls because their licenses have been surrendered, cancelled or revoked. Although African-Americans constitute only 28% of Georgia's population, defendants' data also showed that 49% of these 289,000 registered voters without driver's licenses are black.

American households ... twenty-eight percent of African-Americans live ... in poverty, as compared to ten percent of Caucasians in Georgia. The Census Bureau further reported that 140,000 African-American households in Georgia, as compared to 89,000 Caucasian households in Georgia lacked access to a car.").

For these reasons, the ruling in *Crawford* is not determinative of the merits of petitioners' claims that the Georgia Photo ID Act imposes a burden on their First and Fourteenth Amendment rights to vote that is not, and cannot, be justified under the standard of review in *Anderson*, *Burdick* and *Crawford*.

III. Clarifying the Parameters of *Crawford* Is Necessary to Protect Citizens' Right to Vote Throughout the Nation.

The Eleventh Circuit's decision stands as one example of broader confusion in the federal courts about the standard of review to be applied to laws banning registered voters who lack a photo ID from voting. In addition to the Eleventh Circuit's decision, the Tenth Circuit has issued an opinion illustrating further confusion as to the appropriate standard of review to apply when states ban registered voters who lack photo ID from voting. In *ACLU of N.M. v. Santillanes*, 506 F. Supp. 2d 598, 629 (D.N.M. 2007), the district court ruled that the government had a "burden of coming forward with ***some admissible evidence*** to show that the photo ID law is tailored to advance the precise governmental interest for which it was enacted." (emphasis added.) On review, the Tenth Circuit evaluated the law on equal protection grounds.[7] *ACLU of N.M. v. Santillanes*, 546 F.3d

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[7] The plaintiffs in *Santillanes* originally alleged that the voter ID law not only violated the Equal Protection clause, but

1313, 1322 n.2 (2008). The Tenth Circuit ruled that the district Court imposed "too high a burden" on the State. Yet, the Tenth Circuit did not articulate in any way what an appropriate burden might be, or whether the district was incorrect in concluding that there was any evidentiary burden at all. *Id.* at 1323. Thus, at least two circuits, albeit in different ways, have illustrated confusion over the crucial distinction at the heart of the *Crawford* decision: the difference between rational basis review (which was rejected by the Court in *Crawford*), and the heightened standard of review that the Constitution requires.

This Court should clarify that rational basis review is an improper and insufficient standard of review when a law burdens the right to vote. Such clarification is particularly necessary in light of the proposed legislation in states across the country that would ban registered voters who lack photo ID from exercise their right to vote. During states' current legislative sessions, at least six have considered requiring a photo ID as precondition to voting, with more states presumably to follow.[8]

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the right to vote under the First Amendment. 546 F.3d at 1322. The district court, however, rejected the First Amendment challenge, and ruled with the plaintiffs on their Equal Protection Claim. Accordingly, because plaintiffs did not appeal, only the Equal Protection issue was before the Tenth Circuit. *Id.* at 1322 n. 2. The Tenth Circuit nonetheless refused to apply the heightened pleading standard in *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182 (1999) on the ground *Buckley* was "a First Amendment challenge, not an equal protection challenge to a person's right to vote." 546 F.3d at 1322 n.2. *Compare Anderson*, 460 U.S. at 788 n.7 ("we base our conclusions directly on the First and Fourteenth Amendments and do not engage in a separate Equal Protection Clause analysis.").

[8] Gina Smith, *Voter ID wins key approval*, The State, Feb. 27, 2009 (South Carolina); Jason Rosenbaum, *Voter ID back in*

To protect against the further erosion of the rights of registered voters who lack photo ID, it is crucial that this court expeditiously affirm the critical distinction between: (1) the review mandated by *Anderson*, *Burdick* and *Crawford*, and (2) rational basis review. Voters in many states will elect governors, state legislators, and county and municipal offices in the fall of 2009, and 435 Representatives and 34 Senators, as well as numerous state officials in the 2010 election cycle. Their right to vote is their most fundamental right because it is "preservative of other basic civil and political rights." *Reynolds v. Sims*, 377 U.S. 533, 562, 84 S. Ct. 1362, 1381 (1964). As partisan legislatures across the country enact Photo ID requirements that curtail this fundamental right, this Court should provide lower courts with further guidance to ensure that voters' fundamental rights are safeguarded. The fundamental right to vote should not be trampled by an utter lack of evidentiary accountability. Only a statement from this court can prevent that result.

Legislature in Missouri, Daily Record, Feb. 18, 2009 (Missouri); David White, *Panel votes on party lines to delay bill to require voter ID*, Birmingham News, Feb. 12, 2009 (Alabama); Jake Grovum, *GOP legislators want photo IDs for voting in Minnesota*, Star Tribune, Jan. 27, 2009 (Minnesota); Clay Robinson, *Republicans revive voter ID proposal*, Houston Chronicle, Dec. 15, 2008 at B1 (Texas); Andy Sher, *Tennessee: Winds of change expected with GOP control*, Chattanooga Times Free Press, Nov. 10, 2008 (Tennessee).

CONCLUSION

The ruling of the Eleventh Circuit is a drastic departure from the established rules governing challenges to state election regulations and turns all of those rules on their head. It should be reviewed by this Court in a petition for a writ of certiorari and reversed.

Respectfully Submitted,

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 07-14664, 08-10432

COMMON CAUSE/GEORGIA, *et al.*
PLAINTIFFS-APPELLANTS

v.

EVON BILLUPS, *et al.*
DEFENDANTS-APPELLEES

Appeal from the United States District Court
for the Northern District of Georgia

Filed January 14, 2009

Before: BIRCH and PRYOR, Circuit Judges and STROM,* District Judge.

PRYOR, Circuit Judge:

This appeal concerns whether the legitimate interest of the government of safeguarding the exercise of a civil right is outweighed by a corresponding burden of that right. Although this appeal does not involve the right to travel, *e.g.*, *United States v. Guest*, 383 U.S. 745, 758, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239 (1966), a burden of air travel in contemporary society provides an apt comparison. Before an adult passenger can board an airplane for a commercial flight in the United States, the passenger must present to a federal official an identification card with a photograph of the passenger. The burden of that exercise assists the federal government in keeping passengers safe from physical harm. This appeal concerns whether a state government can use that kind of exercise to safeguard one of our most fundamental civil rights: the right to vote.

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* Honorable Lyle E. Strom, United States District Judge for the District of Nebraska, sitting by designation.

We must decide whether a law of Georgia that requires every voter who casts a ballot in person to produce an identification card with a photograph of the voter unduly burdens the right to vote. The statute also requires state officials to issue, free of charge, a photo identification card to any registered voter. The Georgia Conference of the National Association for the Advancement of Colored People and two individual voters filed this action to enjoin the enforcement of that law on the ground that it unduly burdens the right to vote in violation of the Fourteenth Amendment. The district court dismissed the action on the ground that the NAACP and voters lacked standing, but it alternatively ruled on the merits and denied the permanent injunction. Because we hold that the NAACP and voters have standing, we vacate the order that dismissed the action. We instead render judgment in favor of the election officials of Georgia. We conclude, based on the decision in *Crawford v. Marion County Election Board*, --- U.S. ----, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008), which upheld a similar law in Indiana, that the burden imposed by the requirement of photo identification is outweighed by the interests of Georgia in safeguarding the right to vote. We also conclude that the NAACP and voters are prevailing parties as to a preliminary injunction against an earlier statute that charged a fee for a voter identification card, and we affirm the order that awarded them attorney's fees.

I. BACKGROUND

Voters in Georgia were not required to present any proof of identity to vote until 1997, when the General Assembly enacted a statute that required voters to present identification to election officials to be admitted to the polls and allowed to vote. Several kinds of identification were allowed under that law, including a driver's license, birth certificate, a copy of a current utility bill, and a payroll check. Voters who were unable to produce acceptable identification were allowed to vote if they signed a statement under oath confirming their identity.

In 2005, the General Assembly amended the identification statute to require all registered voters in Georgia to present a government-issued photo identification to election officials to be admitted to the polls and allowed to vote in person. For voters who did not already possess an acceptable form of identification, the statute provided that voter identification cards could be obtained for a fee of $20 to $35. The legislation also eliminated the requirement that voters casting absentee ballots provide one of several statutory excuses to obtain an absentee ballot. The requirement of photo identification became effective on July 1, 2005, subject to preclearance under section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. Ga.Code Ann. § 21-2-417.

In September 2005, several organizations, including the NAACP of Georgia, and two voters, Tony Watkins and Clara Williams, filed a complaint against the Secretary of State of Georgia and the superintendents of elections for several counties in Georgia, in their official and individual capacities, that challenged the Georgia Photo ID Act of 2005, Ga. Code Ann. § 21-2-417. The organizations and voters alleged that the statute imposed a poll tax in violation of the Twenty-Fourth Amendment and Equal Protection Clause, violated the Fourteenth Amendment, violated the Civil Rights Act of 1964 and section 2 of the Voting Rights Act of 1965, and violated the Georgia Constitution.

The organizations and voters sought, and the district court granted, a preliminary injunction to bar enforcement of the statute. The district court ruled that the organizations and voters had proved a substantial likelihood of success on the merits of their claims that the statute unduly burdened the right to vote and constituted a poll tax. Georgia appealed and moved the district court and this Court for a stay pending appeal, which both courts denied.

In 2006, during the pendency of the appeal, the General Assembly repealed the statute and enacted a new statute that requires voters to present a photo identification before voting in person. The new statute requires a voter to produce one of six kinds of photo identification to vote: a driver's license, a voter identification card, a U.S. passport, a government employee identification card, a U.S. military identification card, or a tribal identification card. The legislation also requires each county to issue free of charge a "Georgia voter identification card," with a photograph of the voter, to any registered voter who does not have another acceptable form of identification. The identification cards can be obtained by producing evidence that the voter is registered to vote in Georgia and by swearing an oath that the voter does not have another acceptable form of identification. The statute also permits voters who vote in person but are unable to produce photo identification to cast a provisional ballot and return within forty-eight hours with valid identification. Voters may also vote by absentee ballot without presenting a photo identification unless the voter registered by mail without including photo identification and is voting for the first time.

The new statute divided the General Assembly along partisan lines. The new statute passed the Senate with thirty-two Republicans and no Democrats voting in favor and twenty-one Democrats and one Republican voting in opposition. The new statute also passed the House of Representatives with ninety-eight Republicans and thirteen Democrats voting in favor and sixty Democrats and no Republicans voting in opposition. Governor Perdue, a Republican, signed the bill into law, the Attorney General of the United States precleared the statute, and the new statute became effective before the 2006 primary and general elections.

In February 2006, in response to the passage of the new statute, the organizations and voters amended their complaint to challenge both the repealed statute and the new statute under the state and federal constitutions, the Civil Rights Act of 1964, and the Voting Rights Act of 1965. The district court dismissed as moot the parts of the complaint about the repealed statute. The organizations and voters sought a preliminary injunction that the new statute was invalid on its face and as applied. The organizations and voters alleged that the requirement of photo identification imposed "an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters."

The district court preliminarily enjoined the enforcement of the new statute, but limited the injunction to the July 2006 primary elections and associated run-offs, "reasoning that the 2006 Photo ID Act posed an undue burden on certain voters with respect to those elections." The district court stated that, pending education efforts initiated by the State, the requirement of photo identification might no longer be unduly burdensome in later elections, and it declined to extend the injunction to future elections. The district court also concluded that the organizations and voters did not have a likelihood of success on the merits of their complaint that the statute imposed an unconstitutional poll tax or violated the Civil Rights Act or the Voting Rights Act.

During the pendency of this litigation, a state court permanently enjoined the enforcement of the new statute as violative of the Georgia Constitution. *See Perdue v. Lake*, 282 Ga. 348, 647 S.E.2d 6 (2007). The Supreme Court of Georgia later vacated the injunction and dismissed the action for lack of standing because the plaintiff, who was voting for the first time, did not need photo identification to vote in person and, alternatively, possessed a photo identification card issued by the Metropolitan Atlanta Rapid Transit Authority, which was acceptable under the statute. *Id.* at 7-8. While the injunction by the state court was extant, Georgia suspended all education efforts about the requirement of photo identification.

Georgia resumed its efforts to educate voters in early September 2006. The State mailed a letter to a list of voters who had been identified as not having a card or driver's license issued by the Georgia Department of Driver Services, informing them about the requirement of photo identification and the availability of free voter identification cards. The Secretary of State sent a memorandum and a copy of the letter to every county registrar and requested that the registrars distribute the letter to voters in the county. Georgia adopted a voter education program, which included distribution of letters to counties, civic groups, churches, and other groups. In September 2006, Georgia also resumed on radio and television broadcasts public service announcements about the requirement of photo identification.

The organizations and voters sought another preliminary injunction barring enforcement of the statute during the special elections in September 2006. The district court ruled that the organizations and voters had proved a substantial likelihood of success on the merits of their complaint that the statute unduly burdened the right to vote in violation of the Fourteenth Amendment and enjoined the enforcement of the statute during the September elections. Again, the district court concluded that the organizations and voters were not likely to succeed on their complaint that the statute imposed a poll tax and violated the Voting Rights Act and the Civil Rights Act.

When it issued the preliminary injunctions, the district court expressed concern about the lack of knowledge among voters that photo identification was needed for in-person voting and that absentee voting requirements had changed, but Georgia later undertook "a serious, concerted effort to notify voters" of the new requirements for in-person and absentee voting. In 2007, the Secretary of State increased educational efforts about the requirement of photo identification and developed a three-phase plan to educate voters. Georgia mailed a second letter to voters without a driver's license in August 2007. The letter informed voters about the requirement of photo identification and the procedure for obtaining a free voter identification card. The letter was mailed to voters in the twenty-two counties that had elections scheduled for September 2007 who had been identified as not having a driver's license or having a license that had been suspended, cancelled, surrendered, denied, or revoked. The letter was also mailed to voters who were identified as having an expired photo identification card issued by the Department of Driver Services. Georgia also developed a brochure and postcards about the photo identification requirement to distribute to voters. Other educational efforts included updated information on the state website, flyers, updated voting information guides, paid radio advertisements, posters, and outreach to non-governmental organizations. Georgia developed a website about the requirement of photo identification, www. gaphotoid. com, and trained county registrars about the requirement and voter identification card procedures.

Georgia officials challenged the standing of the plaintiffs. One of the named plaintiffs, Tony Watkins, was dismissed for lack of standing. Before trial, Clara Williams, the lone individual plaintiff, was dismissed for lack of standing because she, like the plaintiff in *Perdue*, possessed a MARTA card, a valid form of identification under the statute. At the request of the organizations and voters, the district court allowed two voters, Bertha Young and Eugene Taylor, to be joined as plaintiffs.

The district court held a bench trial at the end of August 2007. The only claim for relief at that trial was the complaint that the statute unduly burdens the right to vote in violation of the Fourteenth Amendment. The district court dismissed six organizations as plaintiffs, but allowed the NAACP and the individual voters, Young and Taylor, to proceed to trial. The court stated that it would reconsider the standing of Young, Taylor, and the NAACP at the end of trial.

On September 6, 2007, the district court dismissed the complaint for lack of standing and alternatively denied the request for a permanent injunction. The district court concluded that neither the NAACP nor the individual voters had standing. "In an abundance of caution," the district court alternatively addressed the merits of the controversy and determined that the interest of Georgia in preventing voter fraud outweighed the burden of the voters' rights.

The NAACP and voters sought attorney's fees and expenses for their challenge of the earlier statute that charged a fee for voter identification cards. The district court determined that the NAACP and voters were prevailing parties as to their challenge of that statute as a poll tax, and it awarded attorney's fees and expenses for the prosecution of that complaint. 42 U.S.C. § 1988. The district court refused to award attorney's fees regarding the other claims, including any work done on appeal.

II. STANDARDS OF REVIEW

We review issues of standing *de novo*. *DiMaio v. Democratic Nat'l Comm.*, 520 F.3d 1299, 1301 (11th Cir.2008) (per curiam). We review the alternative decision that the NAACP and voters were not entitled to a permanent injunction for an abuse of discretion. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 1839, 164 L.Ed.2d 641 (2006). We review the underlying findings of fact for clear error and conclusions of law *de novo*. *KH Outdoor, L.L.C. v. City of Trussville*, 458 F.3d 1261, 1266 (11th Cir.2006). We "review the district court's award of attorneys' fees and costs for abuse of discretion, revisiting questions of law *de novo* and reviewing subsidiary findings of fact for clear error." *Atlanta Journal & Constitution v. City of Atlanta Dep't of Aviation*, 442 F.3d 1283, 1287 (11th Cir.2006) (emphasis added).

III. DISCUSSION

Our discussion is divided in three parts. First, we address whether the NAACP and voters have standing to challenge the requirement of photo identification. Second, we discuss whether the district court abused its discretion when it declined to enjoin the enforcement of the statute that requires photo identification. Third, we address whether the district court abused its discretion when it awarded attorney's fees to the NAACP and voters for obtaining a preliminary injunction of the earlier statute.

A. The NAACP and Voters Have Standing.

"Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Bochese v. Town of Ponce Inlet,* 405 F.3d 964, 974 (11th Cir.2005) (internal quotation marks omitted). "The party invoking federal jurisdiction bears the burden of proving standing." *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 878 (11th Cir.2000). "[E]ach element of standing must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation." *Id.* (internal quotation marks omitted). "And at the final stage, those facts (if controverted) must be supported adequately by the evidence adduced at trial." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, 112 S.Ct. 2130, 2137, 119 L.Ed.2d 351 (1992) (internal quotation marks omitted).

The requirements for standing, under Article III of the Constitution, are three-fold:

> First, the plaintiff must have suffered, or must face an imminent and not merely hypothetical prospect of suffering, an invasion of a legally protected interest resulting in a "concrete and particularized" injury. Second, the injury must have been caused by the defendant's complained-of actions. Third, the plaintiff's injury or threat of injury must likely be redressible by a favorable court decision.

Fla. State Conference of NAACP v. Browning, 522 F.3d 1153, 1159 (11th Cir. 2008). An injury sufficient for standing purposes is "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560, 112 S.Ct. at 2136 (internal citations and quotation marks omitted). The parties dispute whether the NAACP and the individual voters have established an injury sufficient for standing. We conclude that both the NAACP and voters have standing. We address these parties separately.

1. The NAACP Has Suffered an Injury Sufficient To Confer Standing.

We have explained "that an organization has standing to sue on its own behalf if the defendant's illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Browning*, 522 F.3d at 1165; *see Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982). Based on the reasoning of the Supreme Court in *Havens*, we ruled that the NAACP and another organization had standing to challenge a voting requirement in Florida because the organizations "reasonably anticipate[d] that they [would] have to divert personnel and time to educating volunteers and voters on compliance" with the new voting requirements. *Browning*, 522 F.3d at 1165-66. This effect on the operations of the organizations was a "concrete injury" sufficient to confer standing. *Id.* The district court did not have the benefit of our decision in *Browning* when it held that the NAACP lacked standing.

The record reflects that the NAACP is actively involved in voting activities and would divert resources from its regular activities to educate and assist voters in complying with the statute that requires photo identification. Edward DuBose, the president of the Georgia chapter of the NAACP, testified that the NAACP "is involved in voter registration, mobilization, and education." When DuBose testified in August 2007, the NAACP "ha[d] about [fifteen] to [twenty] voter registration drives scheduled" throughout Georgia. The NAACP is also involved in voter education, including providing a political forum, distributing literature, grading politicians on important issues, and voter mobilization, including transporting voters to the polls. "In 2004, Plaintiff NAACP spent $20,000 to $30,000 on its voter empowerment initiative." The trial testimony reflects that the NAACP "uses [its] resources to maximize the ability to mobilize voters and educate voters and register voters." DuBose testified that the statute would have an effect on the voter registration efforts by the NAACP because it would have to divert volunteers and resources from "getting [voters] to the polls" to helping them obtain acceptable photo identification. DuBose's testimony that the NAACP would have "to redistribute [its] resources" as a result of the requirement that voters produce photo identification to vote in person is undisputed. The record also establishes that the NAACP will have to divert funds to educate and assist voters with increased absentee voting, which is an option for voters who do not have an acceptable form of identification.

Because it will divert resources from its regular activities to educate voters about the requirement of a photo identification and assist voters in obtaining free identification cards, the NAACP established an injury sufficient to confer standing to challenge the statute. *See Browning*, 522 F.3d at 1164. As in *Browning*, the NAACP "cannot bring to bear limitless resources" and the diversion of its resources to address the requirement of a photo identification will cause its "noneconomic goals [to] suffer." *Id.* at 1166. Because we conclude that the NAACP has standing on its own behalf, we need not address whether it has associational standing under *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 342, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383 (1977).

2. Taylor and Young Have Suffered an Injury Sufficient To Confer Standing.

The individual voters also have standing. Young and Taylor suffered a sufficient injury because they are registered voters who do not possess an acceptable photo identification and would "be required to make a special trip to the county registrar's office that is not required of voters who have driver's licenses or passports." The district court rejected this argument and concluded that neither Young nor Taylor established that they have suffered, or were in imminent danger of suffering, an injury in fact because each testified that they could and would obtain a free voter identification card if the statute were enforced. The district court determined that the inconveniences Young and Taylor would encounter were insignificant and did not constitute an injury sufficient for standing, but we disagree.

For purposes of standing, a denial of equal treatment is an actual injury even when the complainant is able to overcome the challenged barrier:

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla., 508 U.S. 656, 666, 113 S.Ct. 2297, 2303, 124 L.Ed.2d 586 (1993). Young and Taylor contend that requiring them to obtain a photo identification is a denial of equal treatment. Unlike voters who already have photo identification, Young and Taylor are required to obtain photo identification before they can vote, and the imposition of that burden is an injury sufficient to confer standing regardless of whether Young and Taylor are able to obtain photo identification. *Id.*

The slightness of their burden also is not dispositive. The Supreme Court has rejected the argument that an injury must be "significant"; a small injury, "an identifiable trifle," is sufficient to confer standing. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n. 14, 93 S.Ct. 2405, 2417 n. 14, 37 L.Ed.2d 254 (1973). Young and Taylor have suffered an injury sufficient to confer standing.

Even if Young and Taylor possessed an acceptable form of photo identification, they would still have standing to challenge the statute that required them to produce photo identification to cast an in-person ballot. "A plaintiff need not have the franchise wholly denied to suffer injury. Any concrete, particularized, non-hypothetical injury to a legally protected interest is sufficient." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir.2005). Requiring a registered voter either to produce photo identification to vote in person or to cast an absentee or provisional ballot is an injury sufficient for standing. The inability of a voter to pay a poll tax, for example, is not required to challenge a statute that imposes a tax on voting, *see Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668, 86 S.Ct. 1079, 1082, 16 L.Ed.2d 169 (1966), and the lack of an acceptable photo identification is not necessary to challenge a statute that requires photo identification to vote in person. Because Young and Taylor, who are registered voters, would be required to present photo identification to vote in person, they have suffered a sufficient injury.

B. The District Court Did Not Abuse Its Discretion When It Declined To Enjoin Permanently the Requirement of Photo Identification.

The Supreme Court "has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction," but this right "is not absolute."

Dunn v. Blumstein, 405 U.S. 330, 336, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274 (1972). "[T]he States have the power to impose voter qualifications, and to regulate access to the franchise in other ways." *Id.* When this Court considers a challenge under the Fourteenth Amendment, it applies "more than one test, depending upon the interest affected or the classification involved." *Id.* at 335, 92 S.Ct. at 999.

The Supreme Court has rejected a "litmus-paper test" for "[c]onstitutional challenges to specific provisions of a State's election laws" and instead has applied a "flexible standard." *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L.Ed.2d 547 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 2063, 119 L.Ed.2d 245 (1992); *Crawford*, 128 S.Ct. at 1616 n. 8. "[A] court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the 'hard judgment' that our adversary system demands." *Crawford*, 128 S.Ct. at 1616. Under this flexible standard, a regulation that imposes a "severe" burden must be "narrowly drawn to advance a state interest of compelling importance," *Burdick*, 504 U.S. at 434, 112 S.Ct. at 2063 (internal quotation marks omitted), but "reasonable, nondiscriminatory restrictions" that impose a minimal burden may be warranted by "the State's important regulatory interests." *Anderson*, 460 U.S. at 788, 103 S.Ct. at 1571. "However slight [the] burden may appear, ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation." *Crawford*, 128 S.Ct. at 1616 (internal quotation marks omitted).

In *Crawford*, the Supreme Court applied this flexible standard and upheld a state law that required voters in Indiana to produce photo identification to vote in person. 128 S.Ct. at 1615-16. The Court weighed the burden imposed on voters against the interests of the state in "deterring and detecting voter fraud," correcting "maladministration" of the voter rolls, and "safeguarding voter confidence." *Id.* at 1617. The Court stated, "The application of the statute to the vast majority of Indiana voters is amply justified by the valid interest in protecting 'the integrity and reliability of the electoral process.' " *Id.* at 1624 (quoting *Anderson*, 460 U.S. at 788 n. 9, 103 S.Ct. at 1570 n. 9).

The NAACP and voters argue that the district court, which did not have the benefit of *Crawford*, failed to apply the flexible standard from *Anderson* and *Burdick*, but we disagree. Although the district court used some language associated with rational basis review, the district court identified the flexible standard from *Burdick* and *Anderson* and weighed the " 'character and magnitude of the asserted injury' ... against 'the precise interests put forward by the State.' " The district court applied the correct standard.

The NAACP and voters dispute whether Georgia put forth "relevant and legitimate state interests 'sufficiently weighty to justify the limitation' " imposed by the photo identification requirement, but we, like the district court, conclude that Georgia invoked weighty interests. Both before the district court and on appeal, Georgia asserted that the requirement of photo identification "is designed to curb voting fraud." "A State indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 7, 166 L.Ed.2d 1 (2006) (internal quotation marks omitted). As the Supreme Court stated in *Crawford*, "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." 128 S.Ct. at 1619. Georgia has an interest in preventing election fraud that "provides a sufficient justification for carefully identifying all voters participating in the election process." *Id.* In *Crawford*, the Supreme Court explained that the requirement of photo identification also serves the related interests of correcting the maladministration of voter rolls and promoting voter confidence. *Id.* at 1617.

The NAACP and voters argue that the district court erred by not requiring Georgia to prove both that in-person voter fraud existed and that requiring photo identification is an effective remedy, but Georgia did not have that burden of proof. *Anderson* requires a state to "identif[y the] ... interests that it seeks to further by its" regulation, but *Anderson* does not require any evidentiary showing or burden of proof to be satisfied by the state government. 460 U.S. at 796, 103 S.Ct. at 1573-74. In *Anderson*, the Supreme Court considered the interests posited by Ohio-voter education, equal treatment of all candidates, and political stability-but did not discuss any record evidence in support of those stated interests. *See id.* at 796-806, 103 S.Ct. at 1574-79. Nor do the more recent decisions in *Burdick*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245, and *Crawford*, 128 S.Ct. 1610, 170 L.Ed.2d 574, place an evidentiary burden on the state when defending a voting regulation. The record in *Crawford* "contain[ed] no evidence of any [in-person voter] fraud actually occurring in Indiana at any time in its history," but this lack of evidence did not negate the interest of Indiana in detecting and deterring voter fraud. 128 S.Ct. at 1619. The Supreme Court looked to the "flagrant examples of such fraud in other parts of the country [that] have been documented throughout this Nation's history by respected historians and journalists, [the] occasional examples [that] have surfaced in recent years, and ... Indiana's own experience with" absentee voter fraud. *Id.* (footnotes omitted). The Court also cited a report issued by the Commission on Federal Election Reform that stated, "There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election." *Id.* at 1618. Even absent specific evidence of in-person voter fraud, the general history of voter fraud and the "real" risk that in-person voter fraud "could affect the outcome of a close election" was sufficient to support the interest of Indiana in deterring voter fraud. *Id.* at 1619. The Supreme Court did not require Indiana to prove specific instances of voter fraud, and we decline to impose that burden on Georgia. *See Am. Civil Liberties Union of N.M. v. Santillanes,* 546 F.3d 1313, 1323 (10th Cir.2008).

The legitimate interest of Georgia in detecting and deterring voter fraud must be weighed against the burden of requiring photo identification to determine whether the interest is "sufficiently weighty to justify the limitation." *Crawford,* 128 S.Ct. at 1616 (internal quotation marks omitted). The ordinary burdens of producing a photo identification to vote, which the Supreme Court described as "arising from life's vagaries," do not "raise any question about the constitutionality of" the Georgia statute. *Id.* at 1620. "The burdens that are relevant to the issue before us are those imposed on persons who are eligible to vote but do not possess a current photo identification that complies with the requirements of" the Georgia statute, particularly those who may have difficulty obtaining a photo identification. *Id.* at 1620-21.

The district court determined that the burden imposed on Georgia voters who lack photo identification was not undue or significant, and we agree. The NAACP and voters argue that the burden is "severe" and affects "between 5 and 10 percent of all registered voters," largely minorities, but the record tells a different story. The NAACP and voters are unable to direct this Court to any admissible and reliable evidence that quantifies the extent and scope of the burden imposed by the Georgia statute.

The NAACP and voters rely on a series of data matches that compared lists of registered voters with records from the Department of Driver Safety to identify voters who did not possess a driver's license or identification card issued by the department. The NAACP and voters argue that their data establish that between 289,000 and 505,000 voters lack a photo identification issued by the Department of Driver Safety and "[i]t is implausible that a significant number of these registered voters would have another form of approved photo ID." This argument fails.

The data relied on by the NAACP and voters are incomplete and unreliable. The data matches fail to account for other forms of identification that are acceptable under the statute, including the free voter identification cards. The lists also contain inaccuracies. The district judge, for example, erroneously appeared on one of the data match lists as not having a driver's license. As in *Crawford*, "on the basis of the evidence in the record it is not possible to quantify ... the magnitude of the burden" imposed on voters who do not possess an acceptable photo identification. 128 S.Ct. at 1622.

The NAACP and voters also failed to prove that any individual would bear a significant burden. As the district court found, both Young and Taylor testified that they could and would obtain a free photo identification with little difficulty. The NAACP and voters, despite their best efforts, failed to identify a single individual who would be unable to vote because of the Georgia statute or who would face an undue burden to obtain a free voter identification card. As the district court stated, the inability to locate a single voter who would bear a significant burden "provides significant support for a conclusion that the Photo ID requirement does not unduly burden the right to vote."

The insignificant burden imposed by the Georgia statute is outweighed by the interests in detecting and deterring voter fraud. Because the burden on Georgia voters is "slight," the state interest need not be "compelling ... to tip the constitutional scales in its direction." *Burdick*, 504 U.S. at 439, 112 S.Ct. at 2066. The legitimate state interest in preventing voter fraud, as recognized in *Crawford*, is more than "sufficient to outweigh the limited burden" of producing photo identification. *Id.* at 440, 112 S.Ct. at 2067.

The NAACP and voters argue that the district court erred when it failed to consider whether the statute was "narrowly tailored" to prevent fraud or whether less restrictive alternatives existed, but this argument also fails. The district court refused to consider whether the statute was "narrowly tailored" or whether a less restrictive alternative existed because "[t]hose arguments ... presuppose[d] that the Court [would] apply a strict scrutiny analysis." When the burden imposed is limited, the Supreme Court has not required a voting regulation to be narrowly tailored:

> [W]hen [First and Fourteenth Amendment] rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 434, 112 S.Ct. at 2063 (internal citation omitted); *see also Crawford*, --- U.S. ----, 128 S.Ct. 1610, 170 L.Ed.2d 574. Because the burden of producing photo identification is not severe, the statute need not be narrowly drawn or the least restrictive alternative.

The NAACP and voters also argue that the statute was "adopted to gain partisan advantage," but the Supreme Court dismissed the relevance of partisan interests in *Crawford*, 128 S.Ct. at 1623-24. "[I]f a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply because partisan interests may have provided one motivation for the votes of individual legislators." *Id.* at 1624. The interest of Georgia in detecting and deterring voter fraud is a "valid neutral justification[ ]" that this Court cannot ignore. *See id.*

The district court did not err when it determined that the legitimate interest of Georgia in preventing voter fraud justified the insignificant burden of requiring voters to present photo identification before they vote in person. *See Crawford*, 128 S.Ct. at 1623. Although the district court did not yet have the benefit of the decision of the Supreme Court in *Crawford*, the district court applied the decisions in *Anderson* and *Burdick* to presage the later decision in *Crawford*. The district court did not abuse its discretion when it denied the request of the NAACP and the voters for a permanent injunction.

C. The District Court Did Not Abuse Its Discretion in Its Award of Attorney's Fees.

Both sides challenge the decisions of the district court about attorney's fees. The district court awarded the NAACP and voters attorney's fees for their challenge of the earlier statute that charged a fee for a voter identification card. Georgia argues that the district court abused its discretion because the NAACP and voters are not "prevailing parties." 42 U.S.C. § 1988. The NAACP and voters cross-appeal and argue that the district court abused its discretion when it refused to award attorney's fees for appellate work related to the challenge of the earlier statute. We reject these arguments and conclude that the district court did not abuse its discretion.

1. The NAACP and Voters Are Prevailing Parties Entitled to Attorney's Fees.

Georgia contends that the NAACP and voters are not prevailing parties under section 1988 and are not entitled to attorney's fees, but we disagree. Georgia first argues that the NAACP and voters cannot be prevailing parties because the district court determined that they lacked standing. Because we decide that the NAACP and voters have standing, we need not address this argument of Georgia. We turn instead to the other argument of Georgia that the NAACP and voters are not prevailing parties because they did not succeed on the merits of their complaint.

"The touchstone of the prevailing party inquiry ... is the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." *Sole v. Wyner*, 551 U.S. 74, 127 S.Ct. 2188, 2194, 167 L.Ed.2d 1069 (2007) (internal quotation marks omitted). This Court has interpreted this language to require either "(1) a situation where a party has been awarded by the court at least some relief on the merits of his claim or (2) a judicial imprimatur on the change in the legal relationship between the parties." *Smalbein ex rel. Estate of Smalbein v. City of Daytona Beach*, 353 F.3d 901, 905 (11th Cir.2003) (per curiam) (internal quotation marks omitted) (emphasis omitted). We have stated that "a preliminary injunction on the merits ... entitles one to prevailing party status and an award of attorney's fees." *Taylor v. City of Fort Lauderdale*, 810 F.2d 1551, 1558 (11th Cir.1987). Although *Taylor* was decided under the "central issue" standard, which the Supreme Court disavowed in *Texas State Teachers Ass'n v. Garland Independent School District*, 489 U.S. 782, 791, 109 S.Ct. 1486, 1493, 103 L.Ed.2d 866 (1989), in favor of the "significant issue" test, the underlying rule that a preliminary injunction is a "material alteration of the legal relationship of the parties" remains good law.

The NAACP and voters are prevailing parties because the preliminary injunction they obtained materially altered their legal relationship with the election officials. The injunction prevented Georgia from enforcing the requirement of photo identification for in-person voting. That injunction remained effective until Georgia repealed the law at issue.

Georgia argues that the decision of the district court not to enjoin the current statute vitiated the earlier victory of the NAACP and voters, but we disagree. Georgia relies on the rule that "[p]revailing party status ... does not attend achievement of a preliminary injunction that is reversed, dissolved, or otherwise undone by the final decision in the same case," *Sole*, 127 S.Ct. at 2195, but that rule is inapplicable. As the district court explained, the preliminary injunction against the earlier statute was not "reversed, dissolved, or otherwise undone" by any judicial decision. Georgia instead repealed the enjoined statute.

2. The NAACP and Voters Are Not Entitled to Attorney's Fees for Appellate Work.

The NAACP and voters argue that the district court abused its discretion when it denied their request for attorney's fees for appellate work related to the challenge of the earlier statute. The district court determined that it was without authority to award fees for time spent on the appeal. The NAACP and voters argue that the rules of this Court should be interpreted to permit the district court to award costs associated with the appeal.

The district court lacked authority to award attorney's fees and costs for work performed before this Court. Rule 39-2 of this Court governs an award of attorney's fees and requires, absent statute or court order, the filing of a request in this Court, not the district court:

> [A]n application for attorney's fees must be filed with the clerk within 14 days after the time to file a petition for rehearing or rehearing en banc expires, or within 14 days after entry of an order disposing of a timely petition for rehearing or denying a timely petition for rehearing en banc, whichever is later.

11th Cir. R. 39-2(a). "It is long established in this circuit that this court has the discretion to award attorney's fees and costs for the work expended before it." *Mills by Mills v. Freeman*, 118 F.3d 727, 734 (11th Cir.1997) (per curiam). "[A] district court is 'not authorized, by local rule or otherwise, to control the filing time or assessment of attorney's fees for services rendered on appeal.' If a party wishes to obtain fees on appeal, he or she must file a petition with the clerk of this circuit within fourteen days of the issuance of the opinion of this court." *Id.* (quoting *Davidson v. City of Avon Park*, 848 F.2d 172, 173 (11th Cir.1985).

The NAACP and voters argue that this Court should interpret its rules to permit the district court to award fees for appellate work, but we are unpersuaded. Rule 39-2(e) permits the district court to award attorney's fees in connection with an appeal following a remand for further proceedings:

> *Remand for Further Proceedings.* When a reversal on appeal, in whole or in part, results in a remand to the district court for trial or other further proceedings (e.g., reversal of order granting summary judgment, or denying a new trial), a party who may be eligible for attorney's fees on appeal after prevailing on the merits upon remand may, in lieu of filing an application for attorney's fees in this court, request attorney's fees for the appeal in a timely application filed with the district court upon disposition of the matter on remand.

11th Cir. R. 39-2(e). The NAACP and voters urge this Court to interpret this rule to allow "a plaintiff who is ultimately successful to recover appellate fees from the district court in circumstances in which the Court of Appeals remands a case in an order that does not finally resolve the matter." This argument is wholly without merit. Rule 39-2(e) applies in the limited situation when a decision on remand is the result of a reversal on appeal. The preliminary injunction of the earlier statute was not reversed on appeal and does not fall within the plain language of this exception. The district court did not abuse its discretion when it refused to award the NAACP and voters attorney's fees related to the appeal of the preliminary injunction.

IV. CONCLUSION

The order of September 6, 2007, that dismissed the complaint of the NAACP and voters is VACATED, and we RENDER judgment in favor of the election officials of Georgia. The order of December 27, 2007, that awarded attorney's fees to the NAACP and voters is AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Case No. CIV A. 4:05CV0201HLM
October 18, 2005

COMMON CAUSE GEORGIA, ET AL.,
PLAINTIFFS,

V.

EVON BILLUPS, ET AL.,
DEFENDANTS.

Order

HAROLD L. MURPHY, District Judge.

This case is an action to have the photo identification ("Photo ID") requirement in the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53), declared unconstitutional both on its face and as applied, and to enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article II, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)). The case is before the Court on Plaintiffs' Motion for Preliminary Injunction [2][23].

I. Background

A. The Parties

Plaintiff Common Cause/Georgia is a chapter of Common Cause, Inc. (Compl. ¶ 1(a).) Common Cause is a non-partisan citizen lobby organized as a not-for-profit corporation under the laws of the District of Columbia, and is devoted to causes such as electoral reform, ethics in government, and the protection and preservation of the rights of all citizens to vote in national, state, and local elections, including educating voters about voting rights and procedures. (*Id.*)

Plaintiff League of Women Voters of Georgia is a non-partisan Georgia non-profit corporation that was founded in 1920. (Compl. ¶ 1(b).) Plaintiff League of Women Voters of Georgia's purpose is to encourage the informed and active participation by citizens in government at all levels, including the protection of the right of all citizens to vote and the education of voters about voting rights and procedures. (*Id.*)

Plaintiff The Central Presbyterian Outreach and Advocacy Center, Inc. is a Georgia non-profit corporation that provides support to people in poverty, including emergency services for basic human needs and assistance in achieving self-sufficiency, including assisting individuals in obtaining photo identification. (Compl. ¶ 1(c).)

Plaintiff Georgia Association of Black Elected Officials, Inc. is an unincorporated association of more than 700 elected officials throughout the State of Georgia who regularly conduct election campaigns and seek the votes of all registered, eligible voters. (Compl. ¶ 1(d).) It also promotes voter registration, education, and participation, preserves minority voting rights, and fights to ensure that no qualified voters are turned away on Election Day for failure to possess a Photo ID card in violation of their right to vote. (*Id.*)

Plaintiff the National Association for the Advancement of Colored People ("Plaintiff NAACP"), through its Georgia State Conference of Branches, is the nation's oldest civil rights organization. (Compl. ¶ 1(e).) Plaintiff NAACP was formed in 1909 by a multiracial group of activists, and has nationwide membership as well as members and offices in Georgia. (*Id.*) Plaintiff NAACP has advocated for the advancement and protection of voting rights for minorities, and, throughout its history, has fought for access to the ballot, for its members and for others. (*Id.*) It also has fought to ensure that racial minorities, low income people, and economically disadvantaged people have access to the ballot box and an equal opportunity to participate in the political process. (*Id.*)

Plaintiff Georgia Legislative Black Caucus ("Plaintiff GLBC") was formed in 1966 and consists of elected African-American members of the House and Senate of the Georgia General Assembly. (Compl. ¶ 1(f).) Plaintiff GLBC's members, as elected representatives, engage in election campaigns, seek votes of registered, eligible voters, and also seek to make certain that the right to vote of all eligible citizens is protected and that no eligible voters are discouraged or prevented from voting on election day for failure to possess a Photo ID card in violation of their right to vote. (*Id.*)

Plaintiff Concerned Black Clergy of Metropolitan Atlanta, Inc. is a non-partisan, interfaith religious organization of mostly African-American members and laity whose mission is to provide leadership, advocacy, and service to the poor, the homeless, and the helpless in the metropolitan Atlanta area, including protecting their rights as citizens to full participation in the democratic process, including the right to register and vote without undue interference. (Compl. ¶ 1(g).)

Plaintiff Clara Williams is an African-American and duly qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia. (Compl. ¶ 1(h)(ii).) Plaintiff Williams does not possess a Georgia driver's license, passport, or other form of government-issued Photo ID, and cannot readily obtain a Photo ID card from the State Department of Driver Services. (*Id.*)

Defendant Evon Billups is the Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County, Georgia, and is charged with the duty of conducting elections in Floyd County, Georgia, and the City of Rome, Georgia. (Compl. ¶ 2(a)(i).) Plaintiffs have sued Defendant Billups in her individual and official capacities. (*Id.*)

Defendant Tracy Brown is the Superintendent of Elections for the Board of Elections and Voter Registration for Bartow County, Georgia, and is charged with the duty of conducting elections in Bartow County, Georgia. (Compl. ¶ 2(a)(ii).) Plaintiffs have sued Defendant Brown in her official and individual capacities. (*Id.*)

Defendants Gary Petty, Michelle Hudson, Amanda Spencer, Ron McKelvey, and Nina Crawford are members of the Board of Elections and Voter Registration for Catoosa County, Georgia, and are charged with the duty of conducting elections in Catoosa County, Georgia. (Compl. ¶ 2(a)(iii).)

Plaintiffs have sued those Defendants in their official and individual capacities. (*Id.*)

Defendant Judge John Payne is the Superintendent of Elections for the Board of Registrars for Chattooga County, Georgia, and is charged with the duty of conducting elections in Catoosa County, Georgia. (Compl. ¶ 2(a)(iv).) Plaintiffs have sued Defendant Payne in his official and individual capacities. (*Id.*)

Defendant Shea Hicks is the Superintendent of Elections for the Board of Elections and Registrations for Gordon County, Georgia, and is charged with the duty of conducting elections in Gordon County, Georgia. (Compl. ¶ 2(a)(v).) Plaintiffs have sued Defendant Hicks in her official and individual capacities. (*Id.*)

Defendant Jennifer A. Johnson is the Superintendent of Elections for the Board of Elections and Voter Registration for Polk County, Georgia, and is charged with the duty of conducting elections in Polk County, Georgia. (Compl. ¶ 2(a)(vi).) Plaintiffs have sued Defendant Johnson in her official and individual capacities. (*Id.*)

Defendant Sam Little is the Superintendent of Elections for the Board of Elections and Registration for Whitfield County, Georgia, and is charged with the duty of conducting elections in Whitfield County, Georgia. (Compl. ¶ 2(a)(vii).) Plaintiffs have sued Defendant Little in his official and individual capacities. (*Id.*)

Defendant Cathy Cox is the Secretary of State for the State of Georgia, and is Chair of the State Election Board. (Compl. ¶ 2(a)(viii).) Defendant Cox has been designated as the Chief Election Official for purposes of the federal Help America Vote Act of 2002, and also is the Chief Election Official for purposes of the National Voter Registration Act of 1933. (*Id.*) Plaintiffs have sued Defendant Cox in her individual and official capacities. (*Id.*)

Plaintiffs allege that the superintendents and board members of the city and county boards of elections named in paragraphs 2(a)(i) through 2(a)(vii) of the Complaint are members of a class that consists of superintendents and members of city and county boards of elections in each of the 159 counties in Georgia, who are so numerous as to make their joinder impracticable. (Compl. ¶ 6.) Plaintiffs seek certification of a defendant class of all superintendents and members of all city and county boards of election in Georgia under Federal Rule of Civil Procedure 23(b)(1) and (b)(2). (*Id.* ¶ 7.)

B. The Georgia Photo ID Requirement

Prior to the 1998 elections, voters in Georgia, like registered voters in a majority of other states, were not required to present identification as a condition of voting. (Compl. ¶ 8.) In 1997, the Georgia General Assembly adopted O.C.G.A. § 21-2-417, which required registered voters in Georgia to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to the polls and of being allowed to vote. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 1.) Prior to its amendment in 1997, O.C.G.A. § 21-2-417 permitted, but did not require, registered voters to present a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. (Compl. ¶ 10.) Under the version of O.C.G.A. § 21-2-417 as amended in 1997, voters remained free to use any of eight other methods of identification for voting, including a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement showing the voter's name and address. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 1.) Additionally, voters who did not have, or could not find, one of the seventeen forms of identification specified in former O.C.G.A. § 21-2-417(a), were entitled to be admitted to the polls, to be issued a ballot, and to be allowed to vote simply by signing a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate. (*Id.*)

In 2005, the Georgia General Assembly adopted House Bill 244, or Act 53 ("HB 244"), which amended O.C.G.A. § 21-2-417 to require that all registered voters in Georgia who vote *in person* in all primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, present a government-issued Photo ID to election officials as a condition of being admitted to the polls and before being issued a ballot and being allowed to vote. Plaintiffs have presented evidence indicating that the Georgia House of Representatives approved the Conference Committee Report on Act 53 by a vote of eighty-nine Republicans and two Democrats, while seventy-two Democrats and three Republicans voted against it. (Decl. of Ron D. Hockensmith ¶ 5 & Ex. 1.) The Senate adopted the Conference Committee Report on Act 53, with thirty-one Republicans and no Democrats voting in favor of the Act and eighteen Democrats and two Republicans voting against the Act. (*Id.*)

Plaintiffs have submitted the Declaration of Margaret S. Smothers, the former Executive Director of the League of Women Voters of Georgia. (Decl. of Margaret S. Smothers ¶ 2.) Ms. Smothers served as the League of Women Voters of Georgia's lobbyist during the 2005 session of the Georgia General Assembly, and worked on voting rights issues, including the proposals to require Photo ID. (*Id.* ¶¶ 2-3.) Ms. Smothers observed:

> 4.
>
> One of the objections opponents had to the photo id proposals was that the proposals included no funding for public education to inform registered voters of the new requirements that they present a photo id card in order to have their vote counted. In contrast, when Georgia shifted to electronic voting machines, the budget and staff of the Secretary of State's office was temporarily increased in order to engage in extensive public education efforts to prepare voters for that change. At the March 21, 2005 hearing on HB 244 before the Senate Committee on State and Local Governmental Operations (SLOGO), Randall Evans, who sponsored the bill and who is currently a member of the State Elections Board expressed the opinion that the Secretary of State's office had funds available from its current budget and that the state could rely on the public education efforts of such groups as the NAACP and AARP. Similar statements about the advocacy groups being sufficient to educate the public were made on the Senate floor during the March 29, 2005 debate on the photo id bill.

> 5.
>
> Advocacy groups opposed to the legislation suggested the issue be studied prior to the next legislative session to determine if there were in fact a serious number of incidents of voter impersonation. At the SLOGO hearing on March 21, 2005 referred to above, Senator John Wiles, chair of the committee, asked if the groups would prefer the legislation to be enacted in the 2005 session, thus, in his view, providing a year for the groups to conduct public education. It was apparent from this comment that the chair was either unaware or was not concerned that municipal elections are conducted in odd years. (*Id.* ¶¶ 4-5.)

Defendant Cathy Cox, Georgia's Secretary of State ("Secretary of State Cox"), wrote a memorandum to the members of the Georgia State Senate, asking that the senators consider the "staggering opportunities for voter fraud" that HB 244 would create. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. A at 1.) Secretary of State Cox observed:

> By allowing any person, at any time within 45 days before an election, to vote an absentee ballot by mail-with no ID requirement and no requirement to state one of the current conditions for voting absentee ((O.C.G.A. § 21-2-380)-such as being out of town on election day, having a

disability, being over 75 years old, etc.), you would be opening a gaping opportunity for fraud. At virtually every meeting of the State Elections Board during the past 10 years, we have dealt with cases involving fraud or election law violations in handling or voting absentee ballots. HB 244 removes all restrictions on voting by mail, and thus makes it quite simple for someone inclined to commit fraud to do so.

This completely contradicts the reasons stated for another measure contained in HB 244-the Photo ID requirement. If the authors are indeed concerned about voter fraud, they would not likely authorize the easiest-and most prevalent form-of election law violations: unregulated voting by mail. In the past 9 years, neither my staff nor I can recall a single case or complaint of a voter impersonating another voter at the polls-the issue sought to be corrected by mandatory photo identification. And had this been occurring, some voter surely would have complained upon finding that someone else had voted under their name. It hasn't happened.

I urge you to fully consider all the changes proposed by HB 244. This bill started out as the "housekeeping" legislation proposed by my office, but other bills-HB 597 and SB 84-have now been merged into it. The bill attempts to solve a problem that does not exist while

> expanding the opportunity for fraud in the area that has long been the most vulnerable to this type of abuse-the mailed absentee ballot.
> (*Id.* at 1-2.)

On April 8, 2005, Secretary of State Cox wrote a letter to Governor Perdue expressing reservations about the Photo ID requirement contained in HB 244, and urging Governor Perdue to veto the bill. In her April 8, 2005, letter, Secretary of State Cox observed:

> "It is my strong belief that the picture identification requirement in House Bill 244 is (1) unnecessary, (2) creates a very significant obstacle to voting on the part of hundreds of thousands of Georgians, including the poor, the infirm and the elderly who do not have drivers licenses because they are either too poor to own a car, are unable to drive [a] car, or have no need to drive a car, (3) very unlikely to receive pre-clearance under the Voting Rights Act by the Department of Justice, (4) violates Art. II, section I paragraph I of the Georgia Constitution by adding a condition on the right to vote that is not contained in the constitution and (5) imposes an undue burden on a fundamental right of all citizens, the right to vote, in violation of both the state and federal constitutions."
> (*Id.* at 1.)

Secretary of State Cox also expressed her belief that the Photo ID requirements of House Bill 244 are unnecessary:

> One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244-the elimination of voter ID fraud at the polls-is an unfounded justification. I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first, and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already "voted" and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who

cared enough to show up at the polls to cast a ballot would almost certainly have complained-but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this state has adopted severe criminal sanctions for the type of voter impersonation that is purportedly of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses. Additionally, the concern for this type of voter fraud has not prompted other states to approve legislation as restrictive as House Bill 244. Forty-two of those states provide for other valid forms of identification besides photo identification. Of the other seven states, not one is as restrictive as the legislation recently enacted in our state. If this type of voting fraud was a national trend, other states would likely be adopting legislation as restrictive as House Bill 244.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure, the State Election Board has reviewed numerous cases of

> voter fraud relating to the use of absentee ballots. However, the Legislature, in adopting House Bill 244 grossly expanded the opportunities for absentee voting by mail without any photographic identification requirement whatsoever, even though absentee ballots pose more of a threat of voting fraud than people voting in a polling location in their community. As a result, the type of voter fraud that *has* frequently occurred in our state is not addressed, and in fact is enhanced by the expansion of vote-by-mail opportunities. In sum, the justification for House Bill 244 is but a pretext.

(Pls.' Br. Supp. Mot. Prelim. Inj. Ex. B at 1-2.) Secretary of State Cox also observed that the Photo ID requirements created substantial obstacles to many Georgia voters:

> Requiring someone who is otherwise registered and fully qualified to vote to present a government issued picture identification at the polling place as a condition of voting places a very real burden on many people, and especially upon the poor and elderly who do not own or cannot drive a car and therefore do not have drivers' licenses. It is estimated by the League of Women Voters and the AARP that an estimated 152,664 individuals over the age of 60 who voted in the 2004 presidential election do not have a Georgia driver's license and are likely not to have

other photo identification. For such voters to obtain identification is often an unnecessarily burdensome task, particularly if such voters are in retirement communities and assisted living facilities, or live in rural areas.

In addition, for many of the poorest residents of our state, photographic identification is not just a matter of unnecessary documentation that has no direct bearing on their day to day lives (they often have no need to drive or travel, or otherwise engage in activities that require a license), but is a burden of cost, economy and time. Although seemingly nominal, the $8.00 fee for an identification card may be a cost that many of our poor residents are unable to bear. Given the fact that the United State[s] Supreme Court has held that a $1.50 poll tax is an unconstitutional burden on the ability [of] an individual to vote (*Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966)), an $8.00 fee for an identification card required by the state would also seemingly be unconstitutional, even if such fee may be waived by the state in the event that a voter swears that he or she is indigent. In fact, to require that someone swear and affirm they are indigent when they are above the level of indigence but nonetheless too poor to afford the cost of an identification card, is both an affront to that person as well as an unlawful

> requirement that he or she swear to something that is not true. In addition, there are other costs related to obtaining an identification [card] which the state does not have the ability to waive. For an individual working on an hourly wage, the time it takes to travel to a DMVS (which may be an unreasonable distance away from the resident[']s home or office), wait in the lengthy lines that result from only having 56 DMVS offices in the state (according to the list of locations posted on *www.dmvs.ga.gov*) and then the return commute, results in actual lost wages. For the state to require this of our citizens, some of whom cannot afford to take such time off, is an unnecessary burden related to the exercise of that person's right to vote.
>
> The geography of state DMVS offices poses a significant burden on many residents who would be required to obtain identification in order to vote. Given this state has only 56 DMVS offices, citizens without cars who reside in 103 of the 159 counties in Georgia must travel outside their home counties to obtain a state-issue[d] picture ID in order to vote. Nor is there a single location to obtain such an ID in the city of Atlanta.

(*Id.* at 2-3). Additionally, Secretary of State Cox expressed her belief that HB 244 violated article II, section 1, paragraph 2 of the Georgia Constitution because it imposed a qualification on voters that was not listed in the Georgia Constitution. (*Id.* at 4.)

Finally, Secretary of State Cox expressed her belief that the Photo ID requirement imposed an undue burden on the fundamental right of citizens to vote:

> Our federal and state courts have consistently recognized the right to vote as one of the most fundamental rights of our citizens. *Wesberry v. Sanders,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964). The right to vote is "preservative" of other rights, and is one that bears the strictest of scrutiny and it is the fundamental nature of this right which cannot be burdened by state actions. *Harper v. Virginia State Bd. of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). The United States Supreme Court, in *Dunn v. Blumstein,* 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), recognized the close constitutional review required with respect to any restriction on the right to vote. In particular, the Supreme Court held in *Dunn* that "before the right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet strict constitutional scrutiny." In addition, our state Supreme Court has also held that "substantive due process requires that state infringement on a fundamental right be narrowly tailored to serve a compelling state interest." *State of Ga. v. Jackson,* 269 Ga. 308, 496 S.E.2d 912 (1998). Our Supreme Court has also held that "when it is established that the

> legislation 'manifestly infringes upon a constitutional provision or violates the rights of the people' that the statute should be declared unconstitutional." *Cobb County School District v. Barker,* 271 Ga. 35, 518 S.E.2d 126 (1999). The intersection of those two precedents presents two clear questions. First, acknowledging that the right to vote is a fundamental right, is House Bill 244 narrowly tailored to serve a compelling state interest? Second, is it established that the photo identification requirements of House Bill 244 do not manifestly infringe upon the rights of the people? Based on the foregoing facts referenced above, the answer to both of these questions is no.

(*Id.* at 5.)

On April 22, 2005, Governor Sonny Perdue signed HB 244, and the Photo ID requirement of HB 244 became effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice. (Compl. ¶ 15.) The Photo ID requirement of HB 244 is codified in O.C.G.A. § 21-2-417, which now provides:

> (a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

(1) A Georgia driver's license which was properly issued by the appropriate state agency;

(2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector;

(3) A valid United States passport;

(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;

(5) A valid United States military identification card, provided that such identification card contains a photograph of the elector; or

(6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section

21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

(c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for

> verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.
>
> O.C.G.A. § 21-2-417.

On August 26, 2005, the Department of Justice granted pre-clearance to Georgia's Photo ID requirement. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 3.)

At the same time that the General Assembly voted to require the presentation of a Photo ID for voting, the General Assembly also voted to amend O.C.G.A. § 40-5-103(a) to double the minimum fee for a Photo ID card from $10 to $20 for a five-year Photo ID, and to authorize a new ten-year Photo ID card for $35. (Compl. ¶ 16.) O.C.G.A. § 40-5-103(a) presently provides:

> (a) Except as provided in subsections (b) and (c) of this Code section, the department shall collect a fee of $20.00 for a five-year card and a fee of $35.00 for a ten-year card, which fee shall be deposited in the state treasury in the same manner as other motor vehicle driver's license fees.
>
> (b) The department shall collect a fee of $5.00 for the identification card for all persons who are referred by a nonprofit organization which organization has entered into an agreement with the department whereby such organization

verifies that the individual applying for such identification card is indigent. The department shall enter into such agreements and shall adopt rules and regulations to govern such agreements.

(c) The department shall not be authorized to collect a fee for an identification card from those persons who are entitled to a free veterans' driver's license under the provisions of Code Section 40-5-36.

(d) The department shall not be authorized to collect a fee for an identification card from any person:

(1) Who swears under oath that he or she is indigent and cannot pay the fee for an identification card, that he or she desires an identification card in order to vote in a primary or election in Georgia, and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and

(2) Who produces evidence that he or she is registered to vote in Georgia.

This subsection shall not apply to a person who has been issued a driver's license in this state.

(d) The commissioner may by rule authorize incentive discounts where

> identification cards are renewed by Internet, telephone, or mail.

O.C.G.A. § 40-5-103.

The Communications Office of Georgia prepared a press release as to HB 244 stating that after the effective date of HB 244, only the following forms of Photo ID will be acceptable: (1) a Georgia Driver's license; (2) a State Identity Card; (3) a passport; (4) a Government Employee ID card; (5) a military ID card; and (6) a tribal ID card. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. F.) According to the same press release, the following forms of previously acceptable identification will no longer be accepted by election officials as valid forms of voter identification: (1) a birth certificate; (2) a Social Security Card; (3) a Certified Naturalization Document; (4) a current utility bill; (5) a bank statement; (6) a government check or paycheck; or (7) other government documents. (*Id.*) The information also includes a statement from Senator Cecil Stanton indicating that the Legislature wanted to " 'protect the integrity of the [voting] process" ' when it enacted the Photo ID law. (*Id.* at 2.)

The new Photo ID requirement applies only to registered voters who vote in person. (Oct. 12, 2005, Hr'g Tr.) The General Assembly imposed no similar Photo ID requirement on absentee voters, except those voting absentee for the first time after registering by mail. (*Id.*)

After adopting HB 244, Georgia became one of only two states that requires registered voters to present a Photo ID as an absolute condition of being admitted to the polls and being allowed to cast a ballot in federal, state, and local elections. (Compl. ¶

17.) Thirty states do not require registered voters to present any form of identification as a condition of admission to the polls or to cast a ballot. (*Id.*) Twenty states require voters to present some form of identification of the polls. (*Id.*) Of those states requiring identification, only two states, Georgia and Indiana, require that voters present a Photo ID as the sole method of identification as a condition of voting. (*Id.;* Oct. 12, 2005, Hr'g Tr.)

C. Obtaining a Photo ID Card

The State of Georgia issues photo identification cards ("Photo ID cards") at its Department of Driver Services ("DDS") offices. (Decl. of Alan Watson ¶ 7 & Ex. C.) As of October 1, 2005, the DDS had fifty-six full-time customer service centers and two part-time customer service centers in Georgia. (*Id.*) Georgia has 159 counties, and individuals who reside in some counties, particularly counties in south and middle Georgia, may have lengthy drives to their nearest DDS service centers. (*Id.* Ex. C.)

No DDS service center is located within the Atlanta, Georgia, city limits or within the Rome, Georgia, city limits. (Watson Decl. Ex. C.) Fulton and DeKalb counties, however, have DDS customer service centers located at (1) 2801 Candler Road, Decatur, Georgia 30034; (2) 537 Shannon Mall, Union City, Georgia 30291; (3) 8610 Roswell Road, Suite 710, Sandy Springs, Georgia 30350; and (4) 8040 Rockbridge Road, Lithonia, Georgia. (*Id.* ¶ 8.) Floyd County, where Rome, Georgia, is located, has a full-time DDS customer service center located at 3386 Martha Berry Highway. (*Id.* ¶ 9.)

Individuals who wish to renew a valid Georgia driver's license or Photo ID card may do so via the Internet. (Watson Aff. ¶ 18.) The DDS makes accommodations for disabled applicants who appear at a DDS service center to obtain a driver's license or Photo ID card. (*Id.* ¶ 17.) DDS policy directs that those applicants be brought to the front of the line, given a "Q-Matic" ticket, and provided with a seat. (*Id.*) The DDS employees then serve the disabled applicants in the order in which their number is called. (*Id.*)

DDS also has a mobile issuance bus known as the Georgia Licensing on Wheels ("GLOW") Bus. (Watson Decl. ¶ 10.) During September 2005, the GLOW Bus visited twenty-five locations. (*Id.* ¶ 10 & Ex. D.) During those visits, the DDS issued a total of 122 free Photo ID cards for voting purposes, ninety-one five-year Photo ID cards, thirteen ten-year Photo ID cards, sixty-one five-year driver's licenses, nine ten-year driver's licenses, and nine veteran's driver's licenses, and also processed two address changes. (*Id.*) In addition to the schedule for the GLOW bus established by the DDS, any group may sponsor the GLOW bus for an appearance in a particular location or community by making arrangements with the DDS. (*Id.* ¶ 11.)

Plaintiffs have presented evidence indicating that DDS employees gave inconsistent information in response to inquiries concerning the locations and dates for an appearance of the GLOW bus at Turner Field in Atlanta and for an appearance of the GLOW bus in downtown Atlanta. (Aff. of Jennifer Owens ¶¶ 3-4.) Plaintiffs also have presented evidence indicating that the GLOW bus has steps for access and is not accessible for purposes of the Americans with Disabilities Act, and that individuals who are confined to wheelchairs cannot enter the bus. (*Id.* ¶ 6.) The photography and computer equipment on the GLOW bus is not mobile and cannot be removed from the bus to service individuals who cannot enter the bus. (*Id.*)

Defendants have presented evidence indicating that all individuals who wish to obtain a Photo ID card must complete an application and pay an applicable fee. (Decl. of Alan Watson ¶ 3.) If an applicant wishes to obtain a Photo ID card for voting purposes but cannot afford the card, a DDS employee will provide an affidavit to the applicant to complete. (*Id.*) The affidavit requires the applicant to swear or affirm that: (a) he or she is eligible to receive the Photo ID card free of charge because he or she is indigent and cannot pay the fee for the Photo ID card; (b) he or she desires a Photo ID card to vote in a primary or election in Georgia; and (c) he or she does not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for voter identification purposes; (d) he or she is registered to vote in Georgia or is applying to register as part of his or her application for a Photo ID card; and (e) he or she does not have a valid driver's license issued by the State of Georgia. (*Id.* ¶ 4 & Ex. A.)

Defendants have presented evidence indicating that the DDS "considers the policy regarding the issuance of a free identification card for voting purposes to be completely nondiscretionary: if the applicant completes the Affidavit, the applicant is automatically eligible for a free photographic identification [card] for voting purposes." (Watson Aff. ¶ 5.) Defendants' evidence indicates that the DDS "makes no effort to verify the provisions of these completed affidavits relating to the applicant's eligibility for a free identification card for voting purposes and does not question the applicant." (*Id.*) According to Defendants, "[i]n short, any applicant who completes such an affidavit will receive a free photographic identification card for voting." (*Id.*)

After HB 244 passed, the DDS trained its district managers concerning the above policy and the process for issuing free Photo ID cards for voting purposes. (Watson Decl. ¶ 6.) In turn, district managers trained their employees in the field offices. (*Id.*) Additionally, DDS sent a written notice concerning the policy and procedure for issuing free Photo ID cards for voting to all of its employees. (*Id.* & Ex. B.) Since the DDS began issuing the Photo ID cards for voting purposes, the DDS has received no complaints that individuals who wished to obtain the cards, whether free or paid, were denied the cards. (*Id.* ¶ 12.)

Defendants have presented evidence that as of July 30 or July 31, 2005, 5,674,479 Georgians possessed unexpired driver's licenses and 731,600 Georgians possessed unexpired Photo ID cards. (Watson Aff. ¶ 13.) When applying for licenses or Photo ID cards at the DDS service centers, applicants also may choose to register to vote under Georgia's "Motor Voter" law. (*Id.*)

In 2005, the fee for driver's licenses and Photo ID cards was $15.00 for four years. (Watson Aff. ¶ 15.) In 2005, the Georgia legislature changed the law to set a $20.00 fee for each driver's license and Photo ID card, and to provide that those driver's licenses and Photo ID cards would be valid for a term of five years. (*Id.*) The new law also provides that Georgians may purchase a ten-year driver's license or Photo ID card for $35.00. (*Id.*) Prior to 2005, the Georgia legislature had not increased the fees for driver's licenses or Photo ID cards in thirteen years. (*Id.*)

Defendants have presented evidence indicating that the fee charged for driver's licenses and Photo ID cards is directly related to the costs of producing and issuing the driver's licenses and Photo ID cards. (Watson Aff. ¶ 16.) For the fiscal year ending June 30, 2004, the DDS conducted a total of 3,344,823 transactions involving producing and issuing driver's licenses and Photo ID cards, obtaining a total revenue of $42,304,316.06 while spending $47,018,808.73 of its budget for the fiscal year. (*Id.*)

The DDS's website explains how to apply for a Photo ID card. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. C.) The website states that applicants for a Photo ID card must furnish proof that they reside in Georgia and provide a valid Georgia residence address by presenting one of the following: (1) a utility bill with a valid Georgia residence address; (2) a bank statement with a valid Georgia residence address; (3) a rental contract or receipt with a valid Georgia residence address; (4) an employer verification; or (5) a Georgia license issued to the applicant's parent, guardian, or spouse. (*Id.*) The website further states that first-time applicants for a Photo ID card must provide an acceptable form of personal identification that includes the applicant's full name and month, day, and year of birth. (*Id.*) Acceptable forms of personal identification include: (1) "[o]riginal birth certificate (State issued) State Vital Statistics (Hospital birth certificates are not acceptable)"; (2) "[c]ertified copy of birth certificate (issued from Vital Statistics with affixed seal)"; (3) "[c]ertificate of birth registration"; (4) certified naturalization records; (5) an immigration ID card from Immigration and Naturalization; or (6) a valid passport. (*Id.*)

Plaintiffs also have submitted information from the Department of Vital Statistics' website concerning the process for obtaining a certified copy of a birth certificate. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. D.) To obtain a certified copy of a birth certificate, an applicant must provide "a photocopy of your valid photo ID, such as: driver's license, state issued ID card, or employer issued photo ID." (*Id.* at 1.) An applicant must pay a $10 search fee. (*Id.* at 2.)

The DDS and its predecessor, the Department of Motor Vehicles, only began collecting social security numbers three years ago, when they issued driver's licenses and Photo ID cards for four years. (Watson Aff. ¶ 19.) Consequently, DDS has collected only three-quarters of the social security numbers for individuals holding driver's licenses and social security cards. (*Id.*) Consequently, matching a list of social security numbers for registered voters with the DDS's list of social security numbers to determine the identity of registered voters who hold a driver's license or a Photo ID card is not possible.

D. Declarations of Would-Be Voters

Plaintiffs have submitted a number of declarations or affidavits of voters. The majority of the declarations state that the voters are not indigent, but do not have $20 to spend for a Photo ID card that they do not need except for purposes of voting. (Decl. of Annie Johnson ¶ 6; Decl. of Betty Kooper ¶ 5; Decl. of Cheryl D. Simmons ¶ 5; Decl. of Clarence Harp ¶ 5; Decl. of Eva Jeffrey ¶ 4; Decl. of George Cliatt ¶ 6; Decl. of Katherine Jackson ¶ 5; Decl. of L. Dewberry ¶ 5; Decl. of Luanna S. Miller ¶ 5; Decl. of Mary Cliatt ¶ 6; Decl. of Norma Pechman ¶ 5; Decl. of Ronnie Gibson ¶ 5; Decl. of Rosa Brown ¶ 8; Decl. of Ruth L. Butler ¶ 5; Decl. of Willie Boye ¶ 5.) A number of the voters do not drive or cannot afford a car. (A. Johnson Decl. ¶ 6; B. Kooper Decl. ¶ 5; C. Simmons Decl. ¶ 5; C. Harp Decl. ¶ 5; Decl. of Eleanor Whittenburg ¶ 2; E. Jeffrey Decl. ¶ 4; Decl. of Irene Laster ¶ 6; K. Jackson Decl. ¶ 5; L. Dewberry Decl. ¶ 5; Decl. of Lawrence Dorn ¶ 5; L. Miller Decl. ¶ 5; M. Cliatt Decl. ¶ 5; Decl. of Minnie Bridges ¶ 5; Decl. of Patricia Lane ¶ 4; Decl. of Pearl Kramer ¶ 5; R. Gibson Decl. ¶ 5; R. Brown Decl. ¶ 7; R. Butler Decl. ¶ 5; T. Jackson Decl. ¶ 5; W. Boye Decl. ¶ 5.)

Most of the voters do not have a driver's license, passport, tribal Photo ID, or other form of government-issued ID because they have no need for one. (A. Johnson Decl. ¶ 4; B. Kooper Decl. ¶ 4; C. Simmons Decl. ¶ 4; Decl. of Clara Williams ¶ 6; C. Harp Decl. ¶ 4; E. Whittenburg Decl. ¶ 4; E. Jeffrey Decl. ¶ 3; Decl. of Exie Brown ¶ 4; G. Cliatt Decl. ¶ 4; I. Laster Decl. ¶ 4; Decl. of Jason Benford ¶ 3; K. Jackson Decl. ¶ 4; L. Dewberry Decl. ¶ 4; L. Dorn Decl. ¶ 4; L. Miller Decl. ¶ 4; M. Cliatt Decl. ¶ 4; M. Bridges Decl. ¶ 4; N. Pechman Decl. ¶ 4; P. Lane Decl. ¶ 4; P. Kramer Decl. ¶ 4; R. Gibson Decl. ¶ 4; R. Brown Decl. ¶ 4; R. Butler Decl. ¶ 4; T. Jackson Decl. ¶ 5; W. Boye Decl. ¶ 4.) Quite a few of the voters are African-American. (A. Johnson Decl. ¶ 4; C. Williams Decl. ¶ 4; G. Cliatt Decl. ¶ 5; I. Laster Decl. ¶ 5; M. Cliatt Decl. ¶ 5; P. Lane Decl. ¶ 1; R. Brown Decl. ¶ 3.) Many of the voters are over sixty-five years old. (A. Johnson Decl. ¶ 1 (seventy-five years old); B. Kooper Decl. ¶ 1 (ninety years old); I. Laster Decl. ¶ 1 (eighty-eight years old); C. Williams Decl. ¶ 1 (sixty-eight years old); E. Brown Decl. ¶ 1 (eighty-two years old); G. Cliatt Decl. ¶ 1 (seventy-four years old); L. Miller Decl. ¶ 1 (eighty-four years old); M. Cliatt Decl. ¶ 1 (eighty-seven years old); M. Bridges Decl. ¶ 1 (eighty-five years old); N. Pechman

Decl. ¶ 1 (eighty-four years old); P. Kramer Decl. ¶ 1 (eighty years old); R. Brown Decl. ¶ 1 (appears to be ninety-three years old); R. Butler Decl. ¶ 1 (eighty-nine years old).)

Several of the voters have physical or mental disabilities that make it difficult for them to travel to a DDS service center, to walk for long distances, or to stand in line. (A. Johnson ¶ 6 (physical disability); E. Whittenburg Decl. ¶ 2 (legally blind and uses walker to assist in walking); E. Brown Decl. ¶ 5 (confined to wheelchair); G. Cliatt Decl ¶ 6 (poor health); I. Laster Decl. ¶ 6 (physical disability); J. Benford Decl. ¶ 5 (mental difficulties); L. Miller Decl. ¶ 5 (legally blind); M. Cliatt Decl. ¶ 6 (physical disability and confined to wheelchair); M. Bridges Decl. ¶ 5 (physical and visual impairment); P. Kramer Decl. ¶ 5 (physical impairment); R. Brown Decl. ¶ 7 (same).) Others have to rely on family members or friends for transportation, or cannot obtain transportation to a DDS service center. (E. Whittenburg Decl. ¶ 2 (relies on family for transportation; closest family member lives thirty-five miles away); E. Brown ¶ 6 (closest DDS service center eleven miles away; family members rarely available to transport her); J. Benford Decl. ¶ 5 (cannot obtain transportation to DDS service center); L. Dorn Decl. ¶ 5 (same).) Another voter would have difficulty taking off from work to go to a DDS service center to obtain a Photo ID. (L. Dewberry Decl. ¶ 5.)

Other voters had problems obtaining necessary information, such as birth certificates or valid driver's licenses from other states, required for issuing a Photo ID card. (E. Whittenburg Decl. ¶ 5 (assisted living resident would have to arrange for transportation to health department and pay $10 for birth certificate); I. Laster Decl. ¶ 6 (born in 1917 and it was not customary to deliver birth certificate in community at that time); P. Lane Decl. ¶¶ 5-6 (could not get Photo ID at four DDS service center because she lacked documentation from Virginia's Department of Motor Vehicles); R. Brown Decl. ¶ 6 (has no birth certificate).) One voter could not get a Photo ID card because the State of North Carolina could not find her birth certificate, but was issued a letter that was good enough to get a passport from the federal government-yet not good enough to get a Photo ID card. (Decl. of Ruth White ¶ ¶ 5-7.) Other voters had problems because their legal names did not match the names they used for voter purposes or the names on their birth certificates. (Decl. of Amanda Clifton ¶ 4 (divorce decree does not state intent to change name); C. Williams Decl. ¶ 4 (informally adopted and birth certificate name does not match voter registration).)

A declaration from George H. Carley, an Associate Justice of the Georgia Supreme Court, describes a lengthy wait at a DDS service center to renew a driver's license. (Decl. of George H. Carley ¶ 2 (describing standing in line at DDS service center for more than three hours to renew driver's license).) Another judge, Henry M. Newkirk, described taking his parents, ages eighty-one and eighty-two, to a DDS service center and standing in line for two hours to hold their places. (Decl. of Henry M. Newkirk ¶¶ 2-3.) He indicated that his parents would not have been able to stand in the line for so long because of their physical ailments, and could not have negotiated the process successfully without assistance. (*Id.* ¶¶ 4-5)[1] Martin Crafter, a candidate for the Ft. Valley City Commission, described having to travel twenty miles to Warner Robbins to obtain a replacement driver's license, and stated that he had to request transportation from someone else to travel to the DDS service center. (Decl. of Marvin Crafter ¶¶ 2-4).

E. Census Data

Plaintiffs have presented data from the 2000 Census to support their claim of vote denial. According to that data, 4.4 percent of African-American households in Georgia have a male householder and no wife present, with children under eighteen years old, as compared to 2.7 percent of Caucasian, non-Hispanic households in Georgia. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. E at 2.) Additionally, 30.1 percent of African-American households in Georgia have a female householder with no husband present and children under eighteen years old, as compared to 7.1 percent of Caucasian, non-Hispanic households in Georgia. (*Id.*)

According to the Census data, 18.5 percent of African-Americans in Georgia who are over age twenty-five have no high school diploma, as compared to 11.8 percent of Caucasian, non-Hispanic individuals over age twenty-five in Georgia. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. E at

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[1] During the October 12, 2005, preliminary injunction hearing, the Court overruled the State Defendants' objections to the declarations presented by Justice Carley and Judge Newkirk. The Court concluded that those declarations did not violate applicable ethical rules, and that Justice Carley likely would take the appropriate action if this case came before the Georgia Supreme Court at some point.

3.) 9.0 percent of African-Americans in Georgia who are over age twenty-five have less than a ninth-grade education, as compared to 5.5 percent of Caucasian, non-Hispanic individuals in Georgia who are twenty-five years and older. (*Id.*) Further, according to the data, 17.7 percent of African-American households in Georgia have no vehicle, as compared to 4.4 percent of Caucasian, non-Hispanic households in Georgia. (*Id.* at 9.)

F. Declarations of Georgia Elections Officials

1. Shea Hicks

Shea Hicks is the Chairperson of the Gordon County Board of Elections and Voter Registration. (Decl. of Shea Hicks ¶ 2.) Ms. Hicks has served in that capacity since 1991. (*Id.*) In her capacity as Chairperson, she supervises all Gordon County elections, as well as elections for municipalities in Gordon County such as Fairmount, Ranger, Resaca, and Plainville. (*Id.*) The Gordon County Board of Elections also assists the City of Calhoun with its elections when the City of Calhoun requests such assistance. (*Id.*) The City of Calhoun has requested assistance from the Gordon County Board of Elections for the November 8, 2005, election. (*Id.*)

Ms. Hicks' office has not received complaints that voters cannot obtain the identification needed for in-person voting. (S. Hicks Decl. ¶ 3.) Ms. Hicks testified that the great majority of voters in Gordon County already use either a driver's license or a State-issued identification card to identify themselves at the polls. (*Id.*)

After the Photo ID requirement passed and obtained preclearance from the Justice Department, the Gordon County Board of Elections ordered new election materials from the Elections Division of the Secretary of State's Office (the "Elections Division"). (S. Hicks Decl. ¶ 4.) Those materials included voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting. (*Id.*) The Gordon County Board of Elections also attended training sessions conducted by the Elections Division. (*Id.*) Those sessions included training on the new Photo ID requirement. (*Id.*) The Gordon County Board of Elections has scheduled poll manager and poll worker training sessions for various dates during the next two weeks. (*Id.* ¶ 6.)

The Gordon County Board of Elections has made efforts to educate the public concerning the Photo ID requirement by providing information to the newspaper. (S. Hicks Decl. ¶ 4.) That information appeared in the local newspaper during the past weekend. (*Id.*)

Gordon County has the following elections scheduled for November 8, 2005:(1) a county-wide Special Local Option Sales Tax ("SPLOST") referendum; (2) a Fairmount city council election; and (3) elections for the Calhoun Board of Education and Calhoun City Council. (S. Hicks Decl. ¶ 5.) Ms. Hicks believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (*Id.* ¶ 7.) Ms. Hicks believes that the Gordon County Board of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Gordon County Board of Elections does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (*Id.*) Additionally, Ms. Hicks believes that holding additional training for poll managers and poll workers would be necessary. (*Id.*)

Finally, Ms. Hicks opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (S. Hicks Decl. ¶ 8.) According to Ms. Hicks, no such mechanism is in place and implementing one would be very costly. (*Id.*) Ms. Hicks also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

2. Lynn Bailey

Lynn Bailey is the Executive Director of the Richmond County Board of Elections. (Decl. of Lynn Bailey ¶ 2.) Ms. Bailey has served in that capacity since 1993. (*Id.*) In her capacity as Executive Director, she supervises all Richmond County elections, as well as elections for municipalities in Richmond County such as Augusta, Blythe, and Hephzibah. (*Id.*)

The Richmond County Board of Elections held a special election on September 20, 2005, to fill the unexpired term of State Senator Charles Walker. (Bailey Aff. ¶ 3.) According to Ms. Bailey, the changes made by the Photo ID requirement were "a nonissue." (*Id.*) She recalled that voters did not seem confused and that poll workers seemed to administer the new procedures properly. (*Id.*) Ms. Bailey testified that most of the voters showed the type of identification that was shown most often under the previous law-a driver's license or a State-issued identification card. (*Id.*)

According to Ms. Bailey, 12,826 people voted at the polls during the September 20, 2005, special election. (Bailey Decl. ¶ 4.) 12,813 of those individuals produced Photo ID at the polls. (*Id.*) The thirteen voters who did not produce a Photo ID at the polls voted provisional ballots. (*Id.*) Only two of those thirteen voters returned with a Photo ID within forty-eight hours. (*Id.*) The Richmond County Board of Elections does not know why the other eleven voters did not return, and it never heard anything else from those voters. (*Id.*)

Before the September 20, 2005, election, the Richmond County Board of Elections ordered new election materials from the Elections Division. (Bailey Decl. ¶ 5.) Those materials included voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting. (*Id.*) The Richmond County Board of Elections also attended training sessions conducted by the Elections Division. (*Id.*) Those sessions included training on the new Photo ID requirement. (*Id.*) The Richmond County Board of Elections also conducted poll worker training prior to the September 20, 2005, election. (*Id.*) Finally, the Richmond County Board of Elections has scheduled additional poll worker training for October 17 through October 19, 2005. (*Id.* ¶ 7.)

Before the September 20, 2005, election, the Richmond County Board of Elections made efforts to educate the public concerning the Photo ID requirement by speaking to neighborhood groups, by using the media, and by educating the candidates.

(Bailey Decl. ¶ 5.) The Richmond County Board of Elections also booked the GLOW bus to allow voters to obtain a Photo ID, and the GLOW bus was stationed in Richmond County on September 6 and 7, 2005. (*Id.*) The Richmond County Board of Elections has requested that the GLOW bus return to Richmond County before the November 8, 2005, election. (*Id.* ¶ 7.)

Richmond County has the following elections scheduled for November 8, 2005:(1) an election to fill the offices of Mayor and five City Commission positions for the City of Augusta; (2) an election to fill the post of Marshal for the Civil and Magistrate Court; (3) a special election to fill the unexpired term of State Representative Henry Howard, who recently died; (4) a special election to fill an unexpired term in Board of Education District 9; (5) a SPLOST vote; and (6) municipal elections for Blythe and Hephzibah. (Bailey Decl. ¶ 6.) Ms. Bailey believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (*Id.* ¶ 8.) Ms. Bailey believes that the Richmond County Board of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Richmond County Board of Elections does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (*Id.*) Additionally, Ms. Bailey believes that holding additional training for poll managers and poll workers would be necessary. (*Id.*) Finally, Ms. Bailey states that the Richmond County Board of Elections would have to re-educate the public concerning the former identification requirements. (*Id.*)

Ms. Bailey opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Bailey Decl. ¶ 10.) According to Ms. Bailey, no such mechanism is in place and implementing one would be very costly. (*Id.*) Ms. Bailey also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

Finally, Ms. Bailey is aware of speculation that people voted as other people under the former law. (Bailey Decl. ¶ 9.) According to Ms. Bailey, the Richmond County Board of Elections has never found substantiated evidence to support that speculation. (*Id.*) In any event, Ms. Bailey believes that evidence of voter impersonation would be difficult to find, because there is no way to track an impersonator after the impersonator leaves the polling place. (*Id.*)

3. Gary Smith

Gary Smith is the Director of Elections for the Forsyth County Board of Elections. (Decl. of Gary Smith ¶ 2.) Mr. Smith has served in that capacity since January 1, 2002. (*Id.*) In his capacity as Director of Elections, he supervises all Forsyth County elections, as well as elections for municipalities in Forsyth County such as Cumming. (*Id.*)

Mr. Smith opines that in-person voter impersonation would be easy to accomplish, as any person can buy a list of electors and determine who ordinarily does not vote. (Smith Decl. ¶ 4.) The imposter then can go to vote in place of someone who ordinarily does not vote. (*Id.*) According to Mr. Smith, without Photo ID or a reasonable method of comparing signatures on registration cards to signatures on voter certificate, there is no real opportunity to prevent such fraud. (*Id.*)

Mr. Smith states that he recently reported six fraudulent voter registrations to the Forsyth County District Attorney's Office. (Smith Decl. ¶ 6.) According to Mr. Smith, the Photo ID requirements assist the Forsyth County Board of Elections in preventing those voters who have registered fraudulently from voting. (*Id.*) Mr. Smith opines that the opportunity for fraud existed under the prior law. (*Id.* ¶ 7.) Mr. Smith observes that limiting the forms of acceptable identification is helpful to the Forsyth County Board of Elections poll workers. (*Id.* ¶ 8.) Mr. Smith notes that many of the poll workers do not know the voters by sight. (*Id.* ¶ 9.)

Mr. Smith's office has not received complaints that voters cannot obtain the identification needed for in-person voting. (Smith Decl. ¶ 11.) Mr. Smith testified that the great majority of voters in Forsyth County already use either a driver's license or a State-issued identification card to identify themselves at the polls. (*Id.*)

Mr. Smith believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Smith Decl. ¶ 10.) Mr. Hicks believes that the various Boards of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Boards of Elections do not have time to hold additional training for poll managers and poll workers would be necessary. (*Id.*)

Mr. Smith opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Smith Decl. ¶ 5.) According to Mr. Smith, no such mechanism is in place and implementing one would be very costly. (*Id.*) Mr. Smith also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

4. Lynn Ledford

Lynn Ledford is the Elections Supervisor for Gwinnett County, Georgia, and has served in that capacity for three years. (Decl. of Lynn Ledford ¶ 2.) Gwinnett County is the second-largest county in Georgia and is one of the fastest-growing counties in the United States. (*Id.*) Gwinnett County has approximately 341,000 registered voters and has more municipalities than any other county in Georgia. (*Id.*)

In her capacity as Elections Supervisor, Ms. Ledford supervises all Gwinnett County elections, and also serves as the official registrar of voters for municipalities in Gwinnett County. (Ledford Decl. ¶ 3.)

After the Photo ID requirement passed and obtained preclearance from the Justice Department, Gwinnett County held a runoff election on September 27, 2005, to fill the unexpired term of Phyllis Miller. (Ledford Decl. ¶ 4.) That election involved seventeen voting precincts. (*Id.* ¶ 6.) According to Ms. Ledford, the changes resulting from Georgia's new Photo ID requirement were a "non-issue." (*Id.* ¶ 5.) Specifically, Ms. Ledford recalled that voters did not seem confused, and poll workers properly administered the new requirements. (*Id.*) According to Ms. Ledford, most voters showed the type of identification that they previously showed most often-a driver's license or state-issued Photo ID card. (*Id.*) No voter cast a provisional ballot for lack of proper Photo ID. (*Id.*)

Prior to the September 27, 2005, election, Gwinnett County ordered new election materials, revised the manual used by poll officials, and sent e-mails and made telephone calls to poll managers to educate the poll managers and poll workers. (Ledford Decl. ¶ 6.)

Gwinnett County has elections scheduled for November 8, 2005. (Ledford Decl. ¶ 6.) Those elections involve twelve municipalities, including Auburn, Berkeley Lake, Braselton, Buford, Dacula, Duluth, Lawrenceville, Lilburn, Loganville, Norcross, Snellville, and Sugar Hill. (*Id.* ¶¶ 6-7.)

Gwinnett County already has obtained supplies of voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting for the November 8, 2005, election. (Ledford Decl. ¶ 8.) Gwinnett County has made efforts to educate the public concerning the Photo ID requirement by using media outlets and by speaking at public engagements. (*Id.*)

Ms. Ledford believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Ledford Decl. ¶ 9.) Ms. Ledford believes that Gwinnett County cannot order and receive new voter certificates and poll posters in time for those elections, and states that Gwinnett County does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (*Id.*) Additionally, Ms. Ledford believes that holding additional training for poll managers and poll workers would be necessary, and that it also would be necessary to re-educate the public concerning the change in the identification requirement. (*Id.*)

Ms. Ledford opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Ledford Decl. ¶ 10.) According to Ms. Ledford, no such mechanism is in place and implementing one would be very costly. (*Id.*) Ms. Ledford also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (*Id.*)

5. Harry MacDougald

Harry MacDougald is a member of the Fulton County Board of Registration and Election ("FBRE"). (Decl. of Harry MacDougald ¶ 1.) As a member of the FBRE, Mr. MacDougald receives and reviews written reports from FBRE staff, information regarding voter fraud trends and indicia, complaints from voters who experience difficulty registering or voting, and reports of fraudulent voter registration and voting in Fulton County. (*Id.*) Fulton County is the largest county in Georgia, and has the largest number of registered voters. (*Id.* ¶ 2.) The FBRE is the superintendent of all Fulton County elections, and also administers elections under contract for several municipalities in Fulton County, including the City of Atlanta and the City of Roswell. (*Id.*)

Mr. MacDougald states that during his service on the FBRE, he has observed numerous problems with fraudulent voter registration applications. (MacDougald Decl. ¶ 3.) According to Mr. MacDougald, during the 2004 election cycle, numerous press accounts of fraudulent voter registration applications surfaced around the United States. (*Id.*) Mr. MacDougald states that he was aware of reports of fraudulent registration applications or investigations into fraudulent registration applications in at least eleven states, including Georgia, Florida, Ohio, Nevada, Colorado, Wisconsin, California, Oregon, Washington, Pennsylvania, and South Carolina. (*Id.*) Mr. MacDougald states that some of the same groups accused of registration fraud in other states were active in Georgia. (*Id.*)

According to Mr. MacDougald, the FBRE received a total of 2,456 voter registration applications submitted to the Secretary of State's office by an organization called The Georgia Coalition for the People's Agenda. (MacDougald Decl. ¶ 3.) The FBRE also received a smaller batch of voter registration applications from an organization called Head Count. (*Id.*) The transmittal from the Secretary of State's office noted that the applications were suspicious, and recommended that the FBRE use verification procedures. (*Id.*) The FBRE's staff examined the applications carefully and reported that all, or nearly all, of the applications appeared fraudulent. (*Id.*) Specifically, many of the applications were written in the same handwriting, had invalid social security numbers, or had invalid addresses. (*Id.*)

In 2004, the FBRE received 2,456 voter registrations that appeared to be fraudulent. (MacDougald Decl. ¶ 4.) The FBRE referred those matters to the Fulton County District Attorney, as well as to the United States Attorney for the Northern District of Georgia. (*Id.*) Although the Fulton County District Attorney apparently did not respond to the FBRE's referral, the United States Attorney's Office opened an investigation into the matter. (*Id.*)

FBRE also sent out "missing information" letters to 8,112 applicants for voter registration during 2004, including the 2,456 applications discussed in the preceding paragraph. (MacDougald Aff. ¶ 5.) The FBRE sends "missing information" letters to applicants for voter registration whose applications do not contain required information or whose applications contain "irregular" information. (*Id.*) In theory, applicants who receive the "missing information" will supply the missing information to the FBRE office, and will be duly registered to vote. (*Id.* ¶ 6.) If the FBRE receives no response to a "missing information" letter, the FBRE does not process the application. (*Id.*)

In response to its 8,112 "missing information" letters sent in 2004, the FBRE received only fifty-five responses sufficient to process the applications and add the voters to the rolls, for a response rate of 0.678 percent and a non-response rate of 99.32 percent. (MacDougald Decl. ¶ 7.) Ten of the responses received indicated fraud by stating that the individuals who received the "missing information" letters had never registered to vote.

(*Id.*) The family of one of those individuals responded that the individual had died. (*Id.*) Meanwhile, the United States Postal Service returned 1,362 of the 8,112 "missing information" letters as undeliverable. (*Id.*) 6,685 of the individuals who received "missing information" letters never responded. (*Id.*)

According to Mr. MacDougald, another group of individuals succeeded in registering to vote in the latter part of 2004, but likely were not valid voters. (MacDougald Decl. ¶ 8.) In 2004, the FBRE had a record number of new registrations and mailed out precinct cards to newly registered voters. (*Id.*) The FBRE had 45,907 new registrations between the deadline for registering to vote in the primary election and the deadline for registering to vote in the general election. (*Id.*) The FBRE mailed precinct cards to all of the 45,907 new registrants, and the United States Postal Service returned 3,071 of those cards as undeliverable. (*Id.*) 971 of those 3,071 registrants whose precinct cards were returned voted in the general election. (*Id.*)

Mr. MacDougald opined that in light of the above information indicating that the FBRE received 8,057 suspect registrations that it could not process because of missing information and that the FBRE received 3,071 precinct cards for newly registered voters returned as undeliverable, the FBRE received a total of 11,128 applications for voter registration that were suspect or problematic "in a serious way." (MacDougald Decl. ¶ 9.) The suspect or problematic voter applications constituted 6.71 percent of the total registration applications processed in Fulton County before the 2004 election. (*Id.*)

Mr. MacDougald is not aware of any complaints to the FBRE made by voters who cannot obtain the

Photo ID required to vote in person at the polls. (MacDougald Decl. ¶ 12.) According to Mr. MacDougald, the "great majority" of Fulton County voters already use a driver's license or state-issued Photo ID card to vote at the polls. (*Id.*)

6. Declaration of Ann Hicks

Ann Hicks serves as an Assistant Director in the Elections Division, and has worked in the Elections Division for twenty-six years. (Decl. of Ann Hicks ¶ 2.) Ms. Hicks' duties include supervising six employees, assisting the Director of the Elections Division with the Division's budget, revising and ordering printed election forms, ordering other election materials used by counties and municipalities for conducting elections, assisting counties with entry of election supply orders and with obtaining approval for shipment of those orders, entering election supply orders for most municipalities, assisting county and municipal elections officials and other parties with numerous election-related questions, and training county and municipal registrars concerning election procedures. (*Id.*) The Elections Division regularly assists county election officials and municipal election officials ("local election officials") with various tasks related to elections. (*Id.* ¶¶ 3-4.)

Local elections officials order election supplies, including voter certificates and poll posters advising voters of the required forms of identification, through the Elections Division. (A. Hicks Decl. ¶ 5.) County elections officials order their supplies electronically, while municipalities that conduct their own elections must telephone in their supply orders, which are entered by Elections Division staff. (*Id.*) The Elections Division also regularly provides training sessions for local election workers who, in turn, train their poll workers prior to elections. (*Id.* ¶ 6.)

After the passage of HB 244, Elections Division staff immediately began training local elections officials throughout Georgia concerning the new law so that the local elections officials could train their poll workers before the elections scheduled for August 30, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (A. Hicks Decl. ¶ 7.) The training also included instruction concerning the new Photo ID requirement for in-person voting and the removal of restrictions for absentee voting. (*Id.*) Specifically, the Elections Division conducted the following training: (1) training for county elections officials through the Georgia Election Officials Association on May 1 through May 4, 2005, which included nearly 400 participants; (2) training for municipal elections officials in June 2005 and July 2005 at four sites around the states, which included nearly 600 participants; (3) an additional training session for municipal elections officials at the University of Georgia held on September 20, 2005; (4) training for voter registrars through the Voter Registrar's Association of Georgia on August 7 through August 10, 2005, which included over 400 participants; and (5) training for newly-created boards of election in September 2005. (*Id.* ¶ 8.) In total, the Elections Department trained 2,000 participants during the past four months. (*Id.*)

After the Justice Department granted preclearance of the Photo ID requirement, approximately thirty-four municipalities held elections on September 20, 2005. (A. Hicks Decl. ¶ 9.) Further, Gwinnett County held a runoff election on September 27, 2005. (*Id.*)

The Elections Division distributed new supplies, including voter certificates and poll posters, to all counties and municipalities that it knew would hold elections on September 20, 2005. (A. Hicks Decl. ¶ 10.) Because the Photo ID requirement did not receive preclearance until after business hours on Friday, August 26, 2005, the Elections Division was very concerned about its ability to provide new forms and posters to all of the local elections boards and municipalities that planned to hold elections on September 20, 2005. (*Id.*)

At least 350 Georgia counties and municipalities will hold elections on November 8, 2005. (A. Hicks Decl. ¶ 11.) According to Ms. Hicks, a preliminary injunction against the Photo ID requirement would cause confusion. (*Id.* ¶ 12.) Specifically, the Elections Division could not hold new training with local elections officials so that those officials, in turn, could train their poll workers. (*Id.*) According to Ms. Hicks, many local elections officials already have conducted their poll worker training for the November 8, 2005, election and would not have sufficient time to conduct more training. (*Id.*) Ms. Hicks believes that a preliminary injunction also would cause confusion among elections officials, poll workers, and voters, especially in jurisdictions that already have held elections using the Photo ID requirement. (*Id.* ¶ 14.)

The Elections Division also is in the process of distributing supplies to local elections officials who will hold elections on November 8, 2005. (A. Hicks Decl. ¶ 13.) According to Ms. Hicks, the Elections Division needs at least one month to process orders for elections supplies and to distribute those supplies. (*Id.*)

As of August 1, 2005, the Elections Division's records indicated that 4,816,904 individuals were registered to vote in Georgia. (A. Hicks Decl. ¶ 15 & Ex. D.)

G. Testimony of Secretary of State Cox

a. Secretary of State Cox's Responsibilities

Secretary of State Cox is Georgia's Secretary of State. (Decl. of Cathy Cox ¶ 2; Oct. 12, 2005, Hr'g Tr.; Dep. of Cathy Cox at 8.) Secretary of State Cox also serves as the Chair of the State Election Board. (Cox Decl. ¶ 2; Oct. 12, 2005, Hr'g Tr.; Cox. Dep. at 9.) The State Election Board consists of five members, including Secretary of State Cox, a representative from the Georgia Democratic Party, a representative from the Georgia Republican Party, a representative from the Georgia Senate, and a representative from the Georgia House of Representatives. (Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox is the principal official in the State Government in charge of elections and for purposes of the Help America Vote Act ("HAVA") and the National Voter Registration Act. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 9.)

b. Reports of Voter Fraud

During the nine years in which Secretary of State Cox has been affiliated with the Secretary of State's Office, that office has not received a report of voter impersonation involving a scenario in which a voter appears at the polls and votes as another person, and the actual person later appears at the polls and attempts to vote as himself. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 14, 16, 47.) Secretary of State Cox does not dispute that under the previous law, it was possible for the above voter impersonation scenario or another form of in-person voter fraud to occur. (Cox Decl. ¶ 5.)

Further, Secretary of State Cox and her staff are not physically present in all 159 counties and the various municipalities on election days. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox therefore acknowledges that issues related to in-person voter fraud may arise that are not reported to her office. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.) According to Secretary of State Cox, local election officials are in the best position to know of such incidents. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.)

The State Election Board has received a number of complaints of irregularities with respect to absentee ballots. (Oct. 12, 2005, Hr'g Tr.) In fact, at most of its meetings, the State Election Board discusses complaints of fraud and irregularities in absentee voting. (*Id.*) Secretary of State Cox also is aware of a previous incident in Dodge County, Georgia, involving vote buying and selling of absentee ballots. (*Id.*) The Dodge County incident involved in-person absentee voting. (*Id.*)

According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud. (Oct. 12, 2005, Hr'g Tr.) Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. (*Id.*) Georgia also imposes criminal penalties for voter impersonation. (*Id.*) Most violations of Georgia election laws are punishable as felonies. (*Id.*) No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud. (*Id.*)

The integrity of the voter list also is extremely important in preventing voter fraud. (Oct. 12, 2005, Hr'g Tr.) The *Atlanta Journal-Constitution* published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. (Pls.' Ex. 11; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox's office undertook an investigation in response to that article. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 40.) The investigation revealed that the specific instance of voter fraud outlined in the *Atlanta Journal-Constitution,* involving a report that Alan J. Mandel had voted after his death, actually did not occur. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.) Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.) Secretary of State Cox's office compared the signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.)

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 43.) The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 43-44.) Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of deceased individuals from the voter rolls. (Cox Dep. at 45.)

c. Concerns Regarding HB 244

In her letter to the Georgia State Senate addressing HB 244, Secretary of State Cox expressed concerns that allowing individuals to vote absentee ballots without showing identification and removing the conditions previously required for obtaining absentee ballots opened a gaping opportunity for fraud. (October 12, 2005, Hr'g Tr.; Cox Dep. at 10-12.) Secretary of State Cox indicated that concerns with respect to absentee ballots involved incidents of individuals picking up absentee ballots for other individuals without the required family relationship and individuals removing absentee ballots from voters' mailboxes. (Oct. 12, 2005, Hr'g Tr.) According to Secretary of State Cox, the only restrictions on absentee voting that tended to prevent fraud were the restrictions for obtaining an absentee ballot. (Oct. 12, 2005, Hr'g Tr.)

In her letter to Governor Purdue concerning HB 244, Secretary of State Cox stated her opinion that the Photo ID requirement for in-person voting was unnecessary, created a significant obstacle to voting for many voters, was unlikely to receive preclearance from the Justice Department, violated the Georgia Constitution, and unduly burdened the fundamental right to vote. (Oct. 12, 2005, Hr'g Tr.; Pls.' Ex. 2; Cox Dep. at 17.) The opinion that Secretary of State Cox expressed in her letter to Governor Purdue remains her personal opinion; however, Secretary of State Cox is obligated to enforce and carry out the Photo ID requirement in her official capacity until the law is declared invalid. (Oct. 12, 2005, Hr'g Tr.)

Secretary of State Cox also requested that Governor Perdue seek the opinion of the Attorney General before approving HB 244. (Oct. 12, 2005, Hr'g Tr.; Pls.' Ex. 2; Cox Dep. at 20.) Secretary of State Cox is not aware that Governor Perdue has sought an opinion from the Attorney General concerning HB 244, and is not aware of any opinion issued by the Attorney General concerning the Photo ID requirement. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 20.)

d. Voter Registration

Secretary of State Cox is aware of efforts to submit fraudulent voter registrations. (Oct. 12, 2005, Hr'g Tr.) Those efforts occurred both before and after Georgia enacted its Photo ID requirement. (*Id.*)

Georgia currently has no requirement that a person seeking to register to vote present a Photo ID. (Oct. 12, 2005, Hr'g Tr.) HB 244 did not address voter registration. (*Id.*)

In 2004, however, Georgia made some changes to its voter registration law to bring the law into conformity with HAVA. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26-27.) The law now provides that applicants should provide some type of identification when they register to vote. (Oct. 12, 2005, Hr'g Tr.) That identification may include one of the seventeen forms of identification required for in-person voting prior to July 1, 2005, and need not necessarily be a Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26.) First-time voters who have registered by mail must provide a Photo ID to vote absentee. (*Id.*) Voters who registered by mail and provided some information concerning their identity, however, are not required to provide a Photo ID to vote absentee. (*Id.*)

Additionally, if a voter does not present identification when registering by mail, but the State can verify certain information provided by the voter through a State database, such as the voter's date of birth, the voter need not present a Photo ID to vote absentee. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26.)

e. Absentee Ballots and Absentee Voting

HB 244 expanded the opportunity for voters to obtain absentee ballots. (Oct. 12, 2005.) Prior to July 1, 2005, voters seeking to obtain absentee ballots had to aver that they met certain requirements. (*Id.*) After July 1, 2005, those requirements no longer apply for purposes of obtaining absentee ballots. (*Id.*)

To obtain an absentee ballot, a voter must send in a request to the local registrar providing his or her name, address, and an identifying number, or must appear in person at the registrar's office and provide such information. (Oct. 12, 2005, Hr'g Tr.) Local elections officials are supposed to compare the signature on the request to the signature on the voter's registration card. (*Id.*) If the signatures match, the local elections officials will send an absentee ballot to the address listed on the voter's registration. (*Id.*) A voter who wishes to vote an absentee ballot need not provide a Photo ID unless that voter registered by mail, did not provide identification, and is voting for the first time by absentee ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27.)

After receiving an absentee ballot, the voter must complete the ballot and return it to the registrar, either by hand-delivery to the registrar's office by the voter or certain relatives of the voter, or by mail.

(Oct. 12, 2005, Hr'g Tr.) Even if an absentee ballot contains a postmark indicating that the voter mailed it on an earlier date, elections officials will not count the absentee ballot if the ballot is not received in the registrar's office by 7:00 p.m. on the day of the applicable election. (*Id.*) Exceptions to this rule exist for voters who are members of the military or reside overseas. (*Id.*)

An absentee ballot that arrives in the registrar's office should be returned in two envelopes-an inner blank "privacy" envelope and an outer envelope that contains an oath signed by the voter. (Oct. 12, 2005, Hr'g Tr.) Local elections officials compare the signature on the oath contained on the outer envelope to the signature on the voter's registration card to verify the voter's identity. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 35.) The signature verification procedure is the only safeguard currently in place in Georgia to prevent imposters from voting by using absentee ballots. (Oct. 12, 2005, Hr'g Tr.) The verification process is done manually. (*Id.*) Absentee ballots are submitted to the local registrars' offices over a forty-day period. (*Id.*) However, if fifty percent of voters decided to vote by absentee ballot in any given election, local elections officials would have a difficult time completing the necessary signature verifications. (*Id.*)

Once a voter returns an absentee ballot to the registrar's office, the voter cannot change that ballot. (Oct. 12, 2005, Hr'g Tr.) The voter, however, has the right to notify the registrar that the voter intends to cancel the absentee ballot and vote in person. (*Id.*)

In the November 2004 general election, 422,490, or approximately ten percent, of Georgia's 4,265,333 registered voters voted absentee ballots. (Pls.' Ex. 4

at 1.) 46,734, or approximately seven percent, of Georgia's 697,420 registered African-American female voters voted absentee ballots, as compared with 189,143, or approximately twelve percent, of Georgia's 1,548,916 registered Caucasian female voters. (*Id.*) 26,144, or approximately six percent, of Georgia's 467,835 registered African-American male voters voted absentee ballots, as compared with 150,722, or approximately eleven percent, of Georgia's 1,376,368 registered Caucasian male voters. (*Id.*)

f. Signature Comparison for In-Person Voting

Presently, elections officials do not compare signatures on voter certificates of in-person voters to signatures on voter registration cards. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) The voter registration cards are not physically present at the polling places. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) Secretary of State Cox testified that it would be possible to send voter registration cards to polling places, but that comparing signatures on voter certificates to signatures on voter registration cards for in-person voters would be time-consuming. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 37.)

g. Voters Without Photo ID

A number of Georgia voters are elderly, have no driver's licenses, and have no need for a state-issued Photo ID card other than for voting purposes. (Oct. 12, 2005, Hr'g Tr.) Further, a number of Georgia voters who are elderly or have low incomes do not have automobiles or use mass transit, and would have difficulty obtaining Photo ID to vote. (*Id.*) Secretary of State Cox does not have information concerning the number of Georgia voters who lack

Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 23.) Secretary of State Cox also has received no correspondence concerning significant problems with the new Photo ID requirement or concerning significant numbers of voters who have not been allowed to vote because of the Photo ID requirement. (*Id.*)

An individual who votes in person but does not present a Photo ID may vote a provisional ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27-28.) Elections officials, however, will not count the provisional ballot unless the voter returns to the registrar's office within forty-eight hours and presents a Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27-28.) Secretary of State Cox has no information indicating that voters have cast a significant number of provisional ballots in the elections conducted after the Photo ID requirement received preclearance. (*Id.*)

h. Training by Elections Division

After the Photo ID requirement received preclearance from the Justice Department, Secretary of State Cox ensured that the Elections Division conducted necessary training, distributed necessary supplies, and did everything possible to ensure that the Photo ID requirement was carried out in every election, including the elections held on August 26, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.) The Elections Division also provided information to the public concerning the Photo ID requirement via the website for the Secretary of State's Office and through other public information efforts. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.)

i. Connection to Local Elections Officials

Local elections officials for counties are connected to the Secretary of State's Office through a mainframe computer. (Oct. 12, 2005, Hr'g Tr.) The Secretary of State's Office has the capability of e-mailing information concerning a preliminary injunction order to the various county elections officials. (*Id.*) The Secretary of State's Office does not have that capacity for municipal elections officials; however, in many cases, county elections officials also manage elections for municipalities within their counties. (*Id.*)

j. Effect of a Preliminary Injunction

Secretary of State Cox believes that a preliminary injunction precluding Georgia from applying the Photo ID requirement in the November 8, 2005, elections likely would cause confusion for election officials, poll workers, and voters, especially in jurisdictions that already have conducted elections under the new law. (Cox Decl. ¶ 8; Oct. 12, 2005, Hr'g Tr.) Additionally, the Elections Division would have to reprint and distribute new election forms and materials for the jurisdictions conducting November 8, 2005, elections in a very short period of time. (Cox Decl. ¶ 8; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox anticipates that such a preliminary injunction would result in some local election officials applying the Photo ID requirement, some local election officials applying the former law, and others applying a variation of the laws. (Cox Decl. ¶ 8.)

H. Procedural Background

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs assert that the Photo ID requirement violates the Georgia Constitution, is a poll tax that violates the Twenty-fourth Amendment and the Equal Protection Clause, unduly burdens the fundamental right to vote, violates the Civil Rights Act of 1964, and violates Section 2 of the Voting Rights Act.

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims. Finally, on October 12, 2005, Plaintiffs filed their First Amendment to Complaint, which addresses the issue of standing for the organizational Plaintiffs.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions. The Court concludes that the Motion for Preliminary Injunction now is ripe for resolution by the Court.

II. Standing

Defendants argue that Plaintiffs lack standing to pursue this lawsuit. The Court addresses the issue of standing before turning to the merits of Plaintiffs' Motion for Preliminary Injunction.

Article III of the federal Constitution limits the power of federal courts to adjudicating actual "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. "The most significant case-or-controversy doctrine is the requirement of standing." *Nat'l Alliance for Mentally Ill, St. Johns Inc. v. Bd. of County Comm'r's,* 376 F.3d 1292, 1294 (11th Cir.2004). " 'In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.' " *Id.* (quoting *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)).

The party invoking federal jurisdiction has the burden of proving standing. *Nat'l Alliance for the Mentally Ill,* 376 F.3d at 1294. At least three different types of standing exist: taxpayer standing, individual standing, and organizational standing. *Id.* To establish those types of standing, a plaintiff must " 'demonstrate that he has suffered injury in fact, that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision.' " *Id.* at 1295 (citing *Bennett v. Spear,* 520 U.S. 154, 162, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997)) (internal quotation marks omitted). For purposes of this Order, the Court focuses on whether the organizational Plaintiffs have standing to pursue this action.[2]

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[2] One of the individual Plaintiffs, Tony Watkins, dismissed his claims without prejudice prior to the October 12, 2005, hearing, apparently because he did not wish to submit to a deposition. Defendants argue that the remaining individual Plaintiff, Clara Williams, lacks standing because she has a MARTA card that would qualify as a Photo ID card under the new Photo ID requirement and because she could vote by absentee ballot. In light of the need to issue a ruling quickly, and in light of the Court's decision *infra* concerning Plaintiffs'

" 'An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' " *Nat'l Alliance for the Mentally Ill*, 376 F.3d at 1296 (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693, 704, 145 L.Ed.2d 610 (2000)). Here, Plaintiffs' First Amendment to Complaint adds a new paragraph 1(i) to their Complaint that states:

> Common Cause, the League, the Central Presbyterian and Advocacy Center, Inc., Georgia Association of Black Elected Officials, Inc., The National Association for the Advancement of Colored People (NAACP), Inc., GLBC, and the Concerned Black Clergy of Metropolitan Atlanta, Inc., (in the aggregate, the "Non-Profit Plaintiffs"), are non-profit organizations composed of members who would have standing to sue in their individual right for the allegations set forth in the Complaint, the interests which each of the Non-Profit Plaintiffs and their members seek to protect in the Complaint are germane to the purpose of each of the Non-Profit Plaintiffs, and neither the claim or the relief sought requires participation by the

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Section 2 claims, the Court does not address Defendants' arguments pertaining to Plaintiff Williams at this point.

> individual members of the Non-Profit Plaintiffs.

(First Am. to Compl.) The Court concludes that Plaintiffs' allegations satisfy the organizational standing requirements, for purposes of Plaintiffs' Motion for Preliminary Injunction.

III. Plaintiffs' Motion for Preliminary Injunction

To obtain a preliminary injunction, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the preliminary injunction is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. *McDonald's Corp. v. Robertson,* 147 F.3d 1301, 1306 (11th Cir.1998). In the Eleventh Circuit, " '[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to the four requisites." *Id.* (quoting *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.,* 887 F.2d 1535, 1537 (11th Cir.1989)) (internal quotation marks omitted) (alterations in original).

A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. " '[P]reliminary injunctions of legislative enactments-because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits-must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.' " *Bankwest, Inc. v. Baker,* 324 F.Supp.2d 1333, 1343 (N.D.Ga.2004) (quoting *Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville,* 896 F.2d 1283, 1285 (11th Cir.1990)).

A. Substantial Likelihood of Success on the Merits

1. Claims Under the Georgia Constitution

Plaintiffs allege that the Photo ID requirement violates article II, section 1, paragraph 2 of the Georgia Constitution. Article II, section 1, paragraph 2 of the Georgia Constitution provides: "Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. The General Assembly shall provide by law for the registration of electors." Ga. Const. art. II, § 1, ¶ 2. Article II, section 1, paragraph 3 of the Georgia Constitution sets forth the following exceptions to the right to register to vote:

> (a) No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.
>
> (b) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

Ga. Const. art. II, § 1, ¶ 3.

Plaintiffs argue that the new Photo ID requirement violates the Georgia Constitution because it denies certain Georgia citizens the right to vote. According to Plaintiffs, the Georgia Constitution lists only two grounds for denying a Georgia citizen who is registered to vote the right to vote: (1) having a conviction for a felony involving moral turpitude; or (2) having a judicial determination of being mentally incompetent to vote. Plaintiffs contend that the Georgia legislature simply has no power to regulate voting outside the areas of defining residency and establishing registration requirements.

Defendants argue that any claim that the State Defendants are violating Georgia law is barred by the Eleventh Amendment. Defendants quote *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), for the proposition that the Eleventh Amendment bars federal courts from enforcing state law either prospectively or retroactively. According to Defendants, because Georgia state courts are the correct arbiters on the meaning of state law, "it would be a 'gross intrusion" ' for this Court to grant a preliminary injunction on the basis of Plaintiffs' claims arising under the Georgia Constitution claims. (State Defs.' Br. Opp'n Pls.' Mot. Prelim. Inj. at 56.)

Defendants also argue that even if Eleventh Amendment immunity does not exist, Plaintiffs cannot succeed because the constitutionality of a Georgia statute is presumed, and " 'all doubts must be resolved in favor of its validity.' " (*Id.* at 57 (citations omitted).) According to Defendants, the General Assembly did not prescribe qualifications for voters when enacting the Photo ID law; instead, they were attempting to regulate the voting process itself. Defendant argue that the in-person Photo ID requirement is a "time, place, or manner" regulation, and that the Georgia Constitution does not require that citizens be permitted to vote in person nor does it state that citizens have an absolute right to be free from any regulation of in-person voting. (*Id.* at 59.)

Before the Court can consider Plaintiffs' claims regarding the Georgia Constitution, the Court must determine whether the Eleventh Amendment to the United States Constitution bars those claims. *McClendon v. Ga. Dept. of Cmty. Health,* 261 F.3d 1252, 1257 (11th Cir.2001); *Silver v. Baggiano,* 804 F.2d 1211, 1213 (11th Cir.1986).

The Eleventh Amendment to the Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Supreme Court has made clear that this language also bars suits against a state by its own citizens. *DeKalb County School Dist. v. Schrenko* 109 F.3d 680, 687 (1997) (citing *Hans v. Louisiana,* 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890)). "In short, the Eleventh Amendment constitutes an 'absolute bar' to a state's being sued by its own citizens, among others." *Id.* (citing *Principality of Monaco v. Mississippi,* 292 U.S. 313, 329, 54 S.Ct. 745, 78 L.Ed. 1282 (1934)).

"[A]bsent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth Amendment." *Id.* at 688 (quoting *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 99, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984) (" *Pennhurst II* ")). "Congress may not nullify a state's immunity with respect to alleged violations of state law." *Id.* "For that reason, a federal court may not entertain a cause of action against a state for alleged violations of state law, even if that state claim is pendent to a federal claim which the district court could adjudicate." *Id.* (citing *Pennhurst II,* 465 U.S. at 117-23, 104 S.Ct. 900). In *Pennhurst II,* the United States Supreme Court explained that:

> [a] federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

Pennhurst II, 465 U.S. at 106, 104 S.Ct. 900.

Because Plaintiffs' suit is against State officials, rather than the State itself, a question arises as to whether the suit is actually a suit against the State of Georgia. "The Eleventh Amendment bars a suit against state officials when 'the state is the real, substantial party in interest.' " *Id.* at 101, 104 S.Ct.

900 (quoting *Ford Motor Co. v. Dept. of Treasury,* 323 U.S. 459, 464, 65 S.Ct. 347, 89 L.Ed. 389 (1945)). A state is the real party in interest when the judgment sought would "restrain the Government from acting, or compel it to act." *Id.* at 101 n. 11, 104 S.Ct. 900 (quoting *Dugan v. Rank,* 372 U.S. 609, 620, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963)) (internal quotation marks and citations omitted).

The injunction Plaintiffs seek here would restrain the State from attempting to enforce the Photo ID requirement imposed by HB 244. The Court therefore finds that the State of Georgia is the real party in interest. Further, the Court finds that Plaintiffs' claim-that the Act violates two sections of the Georgia Constitution-clearly is a cause of action against a state for alleged violations of state law. The Court therefore concludes that this portion of Plaintiffs' Complaint is barred by the Eleventh Amendment.[3]

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[3] The Court notes that Plaintiffs' claims under the Georgia Constitution do not fall within the *Ex Parte Young* exception to the States' Eleventh Amendment immunity from suit. *Ex Parte Young,* 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). The *Young* doctrine, as interpreted by later Supreme Court cases, provides that a suit for prospective relief that challenges a state official's conduct as being contrary to the supreme authority of the United States is not a suit against the State and therefore is not barred by the Eleventh Amendment *Pennhurst,* 465 U.S. at 102, 104 S.Ct. 900 (citing *Young,* 209 U.S. at 160, 28 S.Ct. 441; *Edelman v. Jordan,* 415 U.S. 651, 666-67, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974)). Plaintiffs' claims under the Georgia Constitution, which challenge the enforcement of a state law as being contrary to a state constitution, do not implicate the supreme authority of the United States. Therefore, the *Young* exception to the Eleventh Amendment's bar on suits against a State does not apply to allow the Court to consider those claims.

For the reasons discussed above, the Eleventh Amendment precludes the Court from entertaining Plaintiffs' claims asserted under the Georgia Constitution. The Court therefore concludes that Plaintiffs have failed to show a substantial likelihood of success with respect to those claims.[4]

2. Undue Burden on the Right to Vote

The Supreme Court has made it clear that voting is a fundamental right, *Burdick v. Takushi,* 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), under the Fourteenth Amendment in the context of equal protection, *Kramer v. Union Free Sch. Dist. No. 15,* 395 U.S. 621, 629, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969). Indeed, in *Wesberry v. Sanders,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), the Court observed:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

376 U.S. at 17-18, 84 S.Ct. 526. Similarly, in *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), the Court stated:

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[4] The Court will not dismiss Plaintiffs' claims arising under the Georgia Constitution in this Order because the case is not before the Court on a motion to dismiss those claims. The Court will address Secretary of State Cox's Motion to Dismiss Individual Capacity Claims in a separate Order to be issued at a later date.

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

377 U.S. at 561-62, 84 S.Ct. 1362.

"[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein,* 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). The equal right to vote, however, is not absolute. *Id.* at 336, 92 S.Ct. 995. Instead, states can impose voter qualifications and can regulate access to voting in other ways. *Id.* at 336, 92 S.Ct. 995. Under the United States Constitution, states may establish the time, place, and manner of holding elections for Senators and Representatives. U.S. Const. art. I, § 4, cl. 1. Those qualifications and access regulations, however, cannot unduly burden or abridge the right to vote. *Tashjian,* 479 U.S. at 217, 107 S.Ct. 544 ("[T]he power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote.") (citing *Wesberry v. Sanders,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964)); *Dunn,* 405 U.S. at 359-60, 92 S.Ct. 995 (striking down Tennessee's durational residency requirement for voting of one year in state and three months in county); *Beare v. Briscoe,* 498 F.2d 244, 247-48 (5th Cir.1974) (invalidating provisions of Texas Constitution and implementing statute requiring persons who wished to vote in any given year to register each year during registration period beginning on October 1 and ending on January 31 of following year) (per curiam). In particular, the Supreme Court has observed that the wealth or the ability to pay a fee is not a valid qualification for voting. *Harper v. Va. State Bd., of Elections,* 383 U.S. 663, 666-68, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (citations omitted; footnote omitted).

A number of Supreme Court cases have set forth standards for determining whether a state statute or regulation concerning voting violates the Equal Protection clause. In *Dunn,* the Supreme Court stated that a court must examine: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn,* 405 U.S. at 335, 92 S.Ct. 995. Another Supreme Court case indicates that the Court should " 'consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' " *Kramer,* 395 U.S. at 626, 89 S.Ct. 1886. Those cases apply strict scrutiny when examining state statutes or regulations that limit the right to vote. *Id.* at 627, 89 S.Ct. 1886 ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."); *see also Hill v. Stone,* 421 U.S. 289, 298, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975) ("in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification").

In a more recent line of cases, the Supreme Court has not necessarily applied the strict scrutiny test automatically to regulations that relate to voting. *Burdick,* 504 U.S. at 433-34, 112 S.Ct. 2059; *Tashjian v. Republican Party,* 479 U.S. 208, 213, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). Indeed, the Supreme Court observed in *Burdick:*

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote and his right to associate with others for political ends." Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently.
>
> Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny."

> Instead, ... a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."
>
> Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's most important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 433-34, 112 S.Ct. 2059 (citations omitted).

Defendants argue that the Photo ID requirement simply regulates the manner of voting, and that requiring a Photo ID for in-person voting is a reasonable means of achieving the legitimate state interest of regulating voting and preventing in-person vote fraud. According to Defendants, the Photo ID requirement is not a severe restriction on voting because it prevents no one from voting. Defendants argue that anyone may vote by absentee ballot under HB 244's more relaxed absentee voting requirements. Defendants state that even voters who register by mail may vote for the first time via absentee ballot without showing a Photo ID, and that such voters simply must include a utility bill, a bank statement, or other form of identification permitted by HAVA with their absentee ballots as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

According to Defendants, at most, the Photo ID requirement prevents some individuals who wish to vote in person from doing so until they obtain proper identification. Defendants also contend that those individuals without a Photo ID may obtain one free of charge from a State DDS Office, the State's GLOW Bus, or through certain organizations serving indigent clients merely by completing an Affidavit for Identification Card for Voting Purposes ("Affidavit"). Defendants note that although the Affidavit requires the applicant "to swear [ ] under oath that he or she is indigent and cannot pay the fee," (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. at 48), anyone who desires a non-driver Photo ID card for voting purposes may complete the form and receive the free Photo ID card (Watson Decl. ¶ 5).

Defendants also point out that although opportunities for voter fraud via absentee ballot may exist, the legislature may address one method of voting at a time. In this case, the legislature has chosen to address voting fraud via in-person voting first.

a. Under Strict Scrutiny

There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the *Atlanta Journal-Constitution's* article alleging that more than 5,000 deceased people voted during a twenty-year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

Rather than drawing the Photo ID law narrowly to attempt to prevent the most prevalent type of voter fraud, the State drafted its Photo ID requirement to apply only to in-person voters and to apply only to absentee voters who had registered to vote by mail without providing identification who were voting absentee for the first time. By doing so, the State, in theory, left the field wide open for voter fraud by absentee voting. Under those circumstances, the Photo ID requirement simply is not narrowly tailored to serve its stated purposes-preventing voter fraud. *See Dunn,* 405 U.S. at 343, 92 S.Ct. 995 ("Statutes affecting constitutional rights must be drawn with 'precision,' and must be 'tailored to serve their legitimate objectives. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' ") (citations omitted). Further, the State has a number of significantly less burdensome alternatives available to prevent in-person voting fraud, such as the voter identification requirements it previously used and numerous criminal statutes penalizing voter fraud, to discourage voters from fraudulently casting ballots or impersonating other voters.

For the reasons discussed above, the Court finds that the Photo ID requirement is not narrowly tailored to serve the State's interest in preventing voter fraud, and that a number of significantly less burdensome alternatives exist to address the State's interest. Consequently, the Court concludes that Plaintiffs have a substantial likelihood of succeeding on the merits of their Equal Protection Clause claim under a strict scrutiny analysis.

b. Under *Burdick*

Even if the Court applies the *Burdick* test, Plaintiffs still have a substantial likelihood of succeeding on the merits of their Equal Protection Clause claim. Specifically, "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" outweighs "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Burdick,* 504 U.S. at 433-34, 112 S.Ct. 2059.

i. The Asserted Injury

For the reasons discussed below, the Court concludes that the character and magnitude of the asserted injury to the right to vote is significant. Many voters who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain licenses, or cannot travel to a DDS service center during the DDS's hours of operation because the voters cannot take off time from work. It is beyond dispute that the DDS service centers, particularly those in suburban areas near Atlanta, frequently have lengthy lines, and that obtaining a driver's license or Photo ID at a DDS service center often may require several hours of one's time. Many voters who are elderly, disabled, or have certain physical or mental problems simply cannot navigate the lengthy wait successfully-even if the DDS allows those voters to sit and wait until a DDS worker calls their numbers.

Further, DDS service centers are not located in every Georgia county. Some of the service centers, particularly in south and middle Georgia, are so widely spaced that the service centers may be a lengthy drive away from many of the citizens those centers service. Most of the DDS service centers are located in largely rural areas where mass transit likely is not available, and registered voters who have no need for a driver's license but do not have another form of Photo ID simply may not be able to obtain transportation to a DDS service center.

The Court acknowledges that the DDS has a mobile licensing unit, the GLOW bus. The fact remains, however, that the DDS has only one GLOW bus and Georgia has 159 counties. It therefore is not reasonable to expect that the GLOW bus can travel to all of Georgia's counties and the communities contained within those counties to service a significant number of voters who lack Photo IDs prior to the November 8, 2005, elections. Further, unless some effort is made to notify the public that the GLOW bus will be in a particular area on a particular date, many voters simply would not know of the GLOW bus alternative or would not be able to make arrangements for transportation to take them to the GLOW bus. As Plaintiffs' evidence indicates, even calling the DDS to request information concerning the GLOW bus's schedule of appearances may result in a voter receiving inconsistent information.

In any event, Plaintiffs have presented evidence indicating that the GLOW bus has steps for entering the bus and is not wheelchair-accessible. Many of the voters who do not possess Photo IDs are elderly or disabled and are wheelchair-bound or have difficulty walking or navigating steps. The GLOW bus simply is not a feasible alternative for those voters, as the voters cannot enter the GLOW bus and the GLOW bus's photographic and computer equipment apparently cannot be moved outside the bus to service the voters.

Still other voters do not have the $20 or $35 to pay for a Photo ID card, although they may not qualify as "indigent" for purposes of the fee waiver provision. Although Defendants contend that any voter who needs a Photo ID card for voting and who does not have another form of Photo ID may obtain a Photo ID card for free simply by completing an Affidavit, which the DDS does not question, the evidence fails to indicate that the State has made efforts to publicize the DDS's "no questions asked" policy to voters or that DDS employees tell DDS customers that policy. The Affidavit requires a voter to sign the following statement:

> I hereby swear or affirm that I am eligible for a free identification card for voting purposes pursuant to O.C.G.A. § 40-5-103(d). I am eligible for this card because:
>
> 1. I am indigent and cannot pay the fee for an identification card;
>
> 2. I desire an identification card in order to vote in a primary or election in Georgia;
>
> 3. I do not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for identification at the polls in order to vote;

> 4. I am registered to vote in Georgia or I am applying to register to vote as part of my application for an identification card; and
>
> 5. I do not have a valid driver's license issued by the State of Georgia.

A voter who reads the Affidavit without knowing the DDS's "no questions asked" policy most likely would believe that he or she actually must be indigent and lack funds to pay for an Photo ID card before he or she could obtain a card for free. Such a voter might not even bother completing the Affidavit, for fear that signing a statement under oath that is not true and submitting the Affidavit to a State agency would result in penalties. Thus, the availability of free Photo ID cards simply does not reduce the burden that the Photo ID requirement imposes on the right to vote.[5]

The State Defendants argue that the Photo ID requirement does not deprive voters of the right to vote, as voters can vote via absentee ballot without producing any Photo ID at all in most instances. Most voters, however, likely are unaware that they can vote via absentee ballot without a Photo ID, and the State has not demonstrated that it has publicized the fact that a Photo ID is not necessary to vote via absentee ballot.

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[5] In any event, the Court finds it ironic that the State seeks to prevent one type of lying-fraudulent in-person voting-yet the State points to a DDS policy that apparently allows voters who want Photo ID cards to "lie" about their financial status as support for its argument that the Photo ID requirement does not unduly burden the right to vote.

Further, HB 244 also changed the law governing absentee voting to eliminate the conditions previously required for obtaining an absentee ballot, which had been in effect for some time. Counsel for the State Defendants, in response to the Court's question concerning publication of the new absentee voting requirements, stated that the State has not publicized the new requirements for absentee voting any more or less than the State publicizes any other change in election law. Secretary of State Cox testified that the absentee voting rules in effect prior to the passage of HB 244 required voters to aver that they met one of several specified requirements to obtain an absentee ballot. Absent more information indicating that the State made an effort to inform Georgia voters concerning the new, relaxed absentee voting procedures, many Georgia voters simply may be unaware that the rules have changed. Those voters therefore still may believe that they must satisfy one of the former requirements to obtain an absentee ballot. Voters who cannot satisfy the former requirements likely will not even attempt to obtain an absentee ballot. Consequently, the Court simply cannot assume that Georgia voters who do not have a Photo ID will make the arrangements necessary to vote via the absentee voting process.

In any event, as Secretary of State Cox pointed out, an absentee ballot is only counted if it is received by the registrar in the voter's jurisdiction by 7:00 p.m. the day of the elections. Even absentee ballots postmarked by that date but delivered after 7:00 p.m. on election day are not counted. The only method voters have of ensuring that their vote is counted is to show up at their polling precinct on election day and vote in person or to hand-deliver their absentee ballot to the registrar in their jurisdiction before 7:00 p.m. on election day.[6]

The absentee voting process also requires that voters plan sufficiently enough ahead to request an absentee ballot, to have the ballot delivered from the registrar's office via the United States Postal Service, to complete the ballot successfully, and to mail the absentee ballot to the registrar's office sufficiently early to allow the United States Postal Service to deliver the absentee ballot to the registrar by 7:00 p.m. on election day. The majority of voters-particularly those voters who lack Photo ID-would not plan sufficiently enough ahead to vote via absentee ballot successfully. In fact, most voters likely would not be giving serious consideration to the election or to the candidates until shortly before the election itself. Under those circumstances, it simply is unrealistic to expect that most of the voters who lack Photo IDs will take advantage of the opportunity to vote an absentee ballot.

For the reasons discussed above, the Court finds that absentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID. The fact that voters, in theory, may have the alternative of voting an absentee ballot without a Photo ID thus does not relieve the burden on the right to vote caused by the Photo ID requirement.[7]

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[6] The second method assumes voters know that they may hand-deliver absentee ballots and that voters know where to deliver those ballots. Many voters simply may believe that they can hand-deliver their absentee ballots to a polling place, which is not a viable alternative. Furthermore, many absentee voters do not drive or otherwise lack transportation. Although many organizations provide free transportation to the polls on election day, the availability of free transportation to the registrar's office likely is limited or nonexisten

Additionally, the State argues that voters who do not have Photo ID will not be "turned away" from the polls; rather, those voters may vote a provisional ballot and return within forty-eight hours with a Photo ID. In support of this argument, the State points to the September 20, 2005, special election in Richmond County, where thirteen people without a Photo ID voted via provisional ballot and only two of those individuals returned with a Photo ID within the requisite forty-eight hour period to verify their identity and have their ballots counted. Given the difficulty of obtaining a Photo ID discussed above, it is highly unlikely that many of the voters who lack Photo ID and who would vote via provisional ballots could obtain a Photo ID card within the forty-eight hour period. Indeed, although many organizations are more than happy to transport individuals to polling places on election day, it is unlikely that those organizations or any other organization or individual would be able or willing to provide transportation to DDS service centers to allow voters of provisional ballots to obtain Photo ID cards. The ability to vote a provisional ballot thus is an illusion. Further, many voters may not even attempt to vote a provisional ballot in person because they do not have a Photo ID, and they believe that they cannot make the necessary arrangements to obtain a Photo ID within forty-eight hours after casting their votes.

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[7] Defendants argue that no constitutional right to vote in person exists, citing Oregon's policy of having elections conducted entirely by mail. Oregon's voting by mail structure differs significantly from Georgia's voting procedures. One major difference between Georgia's Photo ID requirement and Oregon's policy of conducting mail elections that is particularly noteworthy is that Oregon's policy places the same burden on every voter. Here, Georgia's Photo ID requirement places the burden of voting absentee on the very class of voters who will be least likely to navigate that method of voting successfully.

The right to vote is a delicate franchise. Indeed, the Court notes that Plaintiff Watkins declined to pursue his claim when he was informed that Defendants planned to depose him.[8] Given the fragile nature of the right to vote, and the restrictions discussed above, the Court finds that the Photo ID requirement imposes "severe" restrictions on the right to vote. In particular, the Photo ID requirement makes the exercise of the fundamental right to vote extremely difficult for voters currently without acceptable forms of Photo ID for whom obtaining a Photo ID would be a hardship. Unfortunately, the Photo ID requirement is most likely to prevent Georgia's elderly, poor, and African-American voters from voting. For those citizens, the character and magnitude of their injury-the loss of their right to vote-is undeniably demoralizing and extreme, as those citizens are likely to have no other realistic or effective means of protecting their rights.

ii. State Interest

The State and the State Defendants assert that the Photo ID requirement is designed to curb voting fraud. Undoubtedly, this interest is an important one. Unfortunately, the fact that the interest asserted is important and is legitimate does not end the Court's inquiry.

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[8] Counsel for Plaintiff Watkins indicated during an October 5, 2005, telephone conference with the Court that Plaintiff Watkins likely would choose not to participate in this litigation if the Court did not grant a request for a protective order to prevent Defendants from deposing him.

iii. Extent to Which the State's Interest In Preventing Voter Fraud Makes It Necessary to Burden the Right to Vote

Finally, the Court must examine the extent to which the State's interest in preventing voter fraud makes it necessary to burden the right to vote. As discussed above, the Photo ID requirement is not narrowly tailored to the State's proffered interest of preventing voter fraud, and likely is not rationally based on that interest. Secretary of State Cox testified that her office has not received even one complaint of in-person voter fraud over the past eight years and that the possibility of someone voting under the name of a deceased person has been addressed by her Office's monthly removal of recently deceased persons from the voter roles. Further, the Photo ID requirement does absolutely nothing to preclude or reduce the possibility for the particular types of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations. The State imposes no Photo ID requirement or absolute identification requirement for registering to vote, and has removed the conditions for obtaining an absentee ballot imposed by the previous law. In short, HB 244 opened the door wide to fraudulent voting via absentee ballots. Under those circumstances, the State Defendants' proffered interest simply does not justify the severe burden that the Photo ID requirement places on the right to vote. For those reasons, the Court concludes that the Photo ID requirement fails even the *Burdick* test.

c. Summary

For the reasons discussed above, the Court finds that under either the strict scrutiny or *Burdick* test, Plaintiffs have a substantial likelihood of succeeding on the merits of their claim that the Photo ID requirement unduly burdens the right to vote. Consequently, this factor counsels in favor of granting a preliminary injunction.

3. Poll Tax

Plaintiffs next argue that the Photo ID requirement imposes a poll tax on Georgia voters. Plaintiffs point out that voters who do not have a Georgia driver's license, a passport, or another valid form of Government-issued identification must pay $20 to obtain a five-year Photo ID card or $35 to obtain a ten-year Photo ID card. Plaintiffs contend that even though the Photo ID requirement does not use the term "poll tax," the fee for the Photo ID card is a tax and is not a user fee. Even if the Photo ID card fee is not a tax as defined under Georgia law, Plaintiffs contend that the State cannot evade the requirements of the Fourteenth and Twenty-Fourth Amendments by labeling something as a "fee" when, in reality, it is a tax on the right to vote.

The Twenty-Fourth Amendment to the United States Constitution provides: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV. The Twenty-Fourth Amendment thus applies to elections for certain federal officials.

Plaintiffs contend that the $20 fee for a five-year Photo ID card or the $35 fee for a ten-year Photo ID is a poll tax because voters who do not have other acceptable forms of Photo ID must obtain the Photo ID card to cast their votes in person at the polls. Although Defendants point out that the DDS can waive the Photo ID card fee for voting under certain circumstances, Plaintiffs argue that this fee waiver provision is illusory. In any event, Plaintiffs argue that the possibility that a small number of voters can avoid paying the cost for a Photo ID card does not make the Photo ID scheme constitutionally permissible; it still places a burden on the right to vote.

For the following reasons, the Court finds that Plaintiffs have a substantial likelihood of success on their poll tax claim. In *Harman v. Forssenius,* 380 U.S. 528, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965), the Supreme Court struck down a Virginia requirement that a federal voter either pay the customary poll taxes as required for state elections or file a certificate of residence. The Supreme Court reasoned that the requirement to file a certificate of residence imposed a material requirement solely upon those who refused to surrender their right to vote in federal elections without paying the poll tax, and, consequently, the requirement violated the Twenty-Fourth Amendment. 380 U.S. at 541-42, 85 S.Ct. 1177. The Supreme Court stated:

> It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. "Constitutional rights would be of little value if they could be ... indirectly denied," or "manipulated out of

existence." Significantly, the Twenty-fourth Amendment does not merely insure that the franchise shall not be "denied" by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be "denied or abridged" for that reason. Thus, like the Fifteenth Amendment, the Twenty-fourth "nullifies sophisticated as well as simple-minded modes" of impairing the right guaranteed. "It hits onerous procedural requirements which effectively handicap exercise of the franchise" by those claiming the constitutional immunity.

Thus, in order to demonstrate the invalidity of § 24-17.2 of the Virginia Code, it need only be shown that it imposes a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax. Section 24-17.2 unquestionably erects a real obstacle to voting in federal elections for those who assert their constitutional exemption from the poll tax. As previously indicated, the requirement for those who wish to participate in federal elections without paying the poll tax is that they file in each election year, within a stated interval ending six months before the election, a notarized or witnessed certificate attesting that they have been continuous residents of the State since the date of registration (which might have been many years before under Virginia's system of permanent registration) and that they do not presently intend to leave the city or county in which they reside prior to

> the forthcoming election. Unlike the poll tax bill which is sent to the voter's residence, it is not entirely clear how one obtains the necessary certificate.... This is plainly a cumbersome procedure. In effect, it amounts to annual re-registration which Virginia officials have sharply contrasted with the "simple" poll tax system. For many, it would probably seem far preferable to mail in the poll tax payment upon receipt of the bill. In addition, the certificate must be filed six months before the election, thus perpetuating one of the disenfranchising characteristics of the poll tax which the Twenty-fourth Amendment was designed to eliminate. We are thus constrained to hold that the requirement imposed upon the voter who refuses to pay the poll tax constitutes an abridgement of his right to vote by reason of failure to pay the poll tax.
>
> The requirement imposed upon those who reject the poll tax method of qualifying would not be saved even if it could be said that it is no more onerous, or even somewhat less onerous, than the poll tax. For federal elections, the poll tax is abolished absolutely as a pre-requisite to voting, and no equivalent or milder substitute may be imposed. Any material requirement imposed upon the federal voter solely because of his refusal to waive the constitutional immunity subverts the effectiveness of the Twenty-fourth Amendment and must fall under its ban.

380 U.S. at 540-42, 85 S.Ct. 1177 (citations omitted; footnote omitted).

Similarly, in *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), the Supreme Court struck down Virginia's poll tax requirement for state elections, finding that the poll tax violated the Equal Protection Clause. The Court stated:

> We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Our cases demonstrate that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate. Thus without questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot, we held ... that a State may not deny the opportunity to vote to a bona fide resident merely because he is a member of the armed services... Previously we had said that neither homesite nor occupation "affords a permissible basis for distinguishing between qualified voters within the State." We think the same must be true of requirements of wealth or affluence or payment of a fee.

383 U.S. at 666-67, 86 S.Ct. 1079 (citations omitted). The Court further observed:

> [W]e must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. In this context-that is, as a condition of obtaining a ballot-the requirement of fee paying causes an "invidious" discrimination that runs afoul of the Equal Protection Clause.

Id. at 668, 86 S.Ct. 1079.

After the enactment of the Photo ID requirement, voters who do not have other acceptable forms of Photo ID must obtain Photo ID cards to be able to vote in person at the polls. Voters who choose not to obtain Photo ID cards, or who are unable to obtain Photo ID cards for one reason or another, are free to vote via absentee ballot. As discussed *supra* Part III.A.2., however, absentee voting is unavailable to many voters who do not have forms of Photo ID-either because those voters are unaware of their eligibility to vote via absentee ballot or because the voters are unable to navigate the absentee voting process successfully. As a practical matter, therefore, the majority of voters who do not have other acceptable forms of Photo ID must obtain a

Photo ID card to cast their votes successfully and to ensure that their votes will be counted.

The fee for a Photo ID card is $20 for a five-year card and $35 for a ten-year card. Because, as a practical matter, most voters who do not possess other forms of Photo ID must obtain a Photo ID card to exercise their right to vote, even though those voters have no other need for a Photo ID card, requiring those voters to purchase a Photo ID card effectively places a cost on the right to vote. In that respect, the Photo ID requirement runs afoul of the Twenty-fourth Amendment for federal elections and violates the Equal Protection Clause for State and municipal elections.[9]

Defendants argue that the DDS service centers will waive the fee for a Photo ID card if a voter who does not have another acceptable form of Photo ID needs the Photo ID card for voting purposes and if the voter completes an Affidavit. The Affidavit requires the voter to sign the following statement:

> I hereby swear or affirm that I am eligible for a free identification card for voting purposes pursuant to O.C.G.A. § 40-5-103(d). I am eligible for this card because:

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[9] *See* John Victor Berry, *Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions,* 74 U. Det. Mercy L.Rev. 291, 304, 314 (1997) (noting that "[t]he Attorney General of Michigan made the observation [with respect to a Michigan voter identification law] that: 'Requiring purchased photo identification is a reprise of the notorious poll tax scheme used in the past to prevent voting;" ' and that "the ability to obtain certain types of photo identification costs money, which is unconstitutional in light of *Harper,* as a qualification based on affluence ....").

> 1. I am indigent and cannot pay the fee for an identification card;
>
> 2. I desire an identification card in order to vote in a primary or election in Georgia;
>
> 3. I do not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for identification at the polls in order to vote;
>
> 4. I am registered to vote in Georgia or I am applying to register to vote as part of my application for an identification card; and
>
> 5. I do not have a valid driver's license issued by the State of Georgia.

(Watson Decl. Ex. A.) The DDS, however, instructs its employees not to investigate the truth of the representations made by voters who complete the Affidavit. Instead, DDS employees are to issue a Photo ID card to any voter who completes the Affidavit, without asking any questions. As discussed *supra* Part III.A.2., however, many voters may not be aware of that policy, and understandably may be reluctant to sign an Affidavit that requires them to state that they are "indigent and cannot pay the fee for an identification card" when such a statement is not true. Additionally, many voters simply may be too embarrassed over their inability to afford a Photo ID card to request and complete an Affidavit for a free card. Berry, *supra* note 9, at 307. Consequently, very few voters likely will take advantage of the fee waiver affidavit option. In any event, as Plaintiffs' counsel correctly observes, the fact that some individuals avoid paying the cost for the Photo ID card does not mean that the Photo ID card is not a poll tax.

Moreover, even if the Court accepts as true Defendants' argument that the fee waiver affidavit option is realistically available for any voter who wishes to use that option, the fee waiver affidavit still runs afoul of the Twenty-fourth Amendment. As the Supreme Court noted in *Harman,* any material requirement imposed upon a voter solely because of the voter's refusal to pay a poll tax violates the Twenty-fourth Amendment. *Harman,* 380 U.S. at 542, 85 S.Ct. 1177. A voter who does not have another acceptable form of Photo ID and who wishes to vote must, as a practical matter, obtain a Photo ID card. To obtain a Photo ID card, the voter must arrange for transportation to a DDS service center or the GLOW bus, if that option is available, and must navigate the lengthy waiting process successfully. The voter then must pay the $20 fee or sign the fee waiver affidavit, which may require the voter to swear or affirm to facts that simply are not true in order to avoid paying the $20 fee. Under those circumstances, the Court cannot determine that the fee waiver affidavit is not a material requirement, as discussed in *Harman.* Consequently, the Court finds that the Photo ID requirement imposes a poll tax.

For the reasons discussed above, the Court concludes that the Photo ID requirement constitutes a poll tax. The Photo ID requirement thus violates the Twenty-fourth Amendment with respect to federal elections and violates the Equal Protection Clause with respect to State and municipal elections. Under those circumstances, the Court concludes that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their poll tax claim.

4. Civil Rights Act of 1964

Alternatively, Plaintiffs contend that Georgia's Photo ID requirement violates the Civil Rights Act of 1964, 42 U.S.C.A. § 1971 by applying different standards to absentee and in-person voters within the same county and by precluding voting due to an omission that is not material to the right to vote under Georgia law. Defendants argue that both of Plaintiffs' claims under § 1971 fail as a matter of law because § 1971 does not furnish a private right of action. Because that argument may dispose of Plaintiffs' § 1971 claims, the Court addresses that argument before turning to the particulars of Plaintiffs' claims.

Defendants rely on language in § 1971(c) stating that "the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventative relief, including an application for a permanent or temporary injunction, restraining order, or other order." (State Defs.' Br. Opp'n Pls. Mot. Prelim. Inj. at 49 (citation omitted).) Defendants rely wholly on the quoted statutory language and cite two cases as additional support for their argument: *Willing v. Lake Orion Community Schools Board of Trustees,* 924 F.Supp. 815, 820 (E.D.Mich.1996), and *Good v. Roy,* 459 F.Supp. 403, 405 (D.Kan.1978). Defendants further contend that even if § 1971 affords Plaintiffs a private right of action, Plaintiffs' claims still fail because the Photo ID requirement does not discriminate on the basis of race, color, or previous condition.

The Eleventh Circuit directly addressed the issue of whether § 1971 could be enforced by a private right of action in *Schwier v. Cox,* 340 F.3d 1284 (11th Cir.2003). In *Schwier,* the Eleventh Circuit reversed a district court ruling which relied on *McKay v. Thompson,* 226 F.3d 752 (6th Cir.2000), which in turn relied entirely on *Willing,* which in turn relied entirely on *Good*-the two cases cited by Defendants. The Eleventh Circuit held that "the provisions of section 1971 of the Voting Rights Act may be enforced by a private right of action under § 1983." *Schwier,* 340 F.3d at 1297. The Eleventh Circuit's holding is not limited to the fact pattern at issue in *Schwier,* regarding an individual's refusal to disclose his social security account number, and Judges Dubina, Black, and Ryskamp conducted a thorough analysis of the legislative history behind § 1971(c) and the Supreme Court's rationale behind holdings permitting private rights of action to enforce other sections of the Voting Rights Act. *Id.* at 1294-95. The Court is bound to apply *Schwier,* and the Court consequently finds as a matter of law that Plaintiffs may assert a private right of action under § 1971 for the alleged voting rights violations at issue.

a. 42 U.S.C.A. § 1971(a)(2)(A)

First, Plaintiffs argue that Georgia's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(A) by applying different standards in determining whether individuals within the same county or other political subdivision are qualified to vote. 42 U.S.C.A. § 1971(a)(2)(A) provides that "[n]o person acting under color of state law shall," when "determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." 42 U.S.C.A. § 1971(a)(2)(A).

Plaintiffs argue that the Photo ID requirement runs afoul of this subsection because the Photo ID requirement applies different standards to voters who reside in the same city or county who vote absentee than it applies to people who vote in person. Plaintiffs note that the Photo ID requirement applies only to voters who vote in person at the polls, while voters who vote absentee by mail do not have to comply with the Photo ID requirement unless they are registering to vote absentee, or are voting absentee for the first time. Additionally, voters who registered by mail and are voting by absentee ballot for the first time may include a utility bill or bank statement with their absentee ballot as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

Plaintiffs point out that although the stated purpose of the Photo ID requirement is to prevent voter fraud, the Photo ID requirement does nothing to address the largest sources of potential voter fraud-absentee voting and fraudulent voter registrations. In support of this argument, Plaintiffs cite to correspondence from Secretary of State Cox to Governor Perdue and the Georgia State Senate with respect to HB 244 indicating that over her tenure, she and her staff could not recall a single case or complaint of voter impersonation at the polls. In contrast, her office received numerous complaints of fraudulent absentee voting during the same time period. HB 244, in Secretary of State Cox's opinion, expanded opportunities for absentee voting by mail by eliminating the previous restrictions on obtaining an absentee ballot. Consequently, Plaintiffs contend that the Photo ID requirement, by its plain language, clearly violates 42 U.S.C.A. § 1971(a)(2)(A) because it imposes standards on voters in the same county or city that differ for absentee voters versus in-person voters.

Defendants contend that HB 244 does not apply different standards in determining whether any individual is qualified under State law to vote in person in any election. Defendants argue that individuals who choose to vote in person are all held to the same standard regardless of their race or color, and that individuals who choose to vote by absentee ballot are all held to the same standard regardless of their race or color.

Plaintiffs cited no case law and provided limited information in support of this claim at the preliminary injunction hearing. The Court therefore cannot determine at this point that Plaintiffs have a substantial likelihood of succeeding on the merits of this claim. Because Plaintiffs may be able to produce evidence and authority at a later stage of the proceedings that support this claim, the Court reserves a ruling on the merits of a claim for a later date.

b. 42 U.S.C.A. § 1971(a)(2)(B)

Second, Plaintiffs contend that Georgia's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(B), which prohibits a person acting under color of law from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 42 U.S.C.A. § 1971(a)(2)(B).

Plaintiffs contend that to be qualified to vote in Georgia, a voter need only: (1) be a United States citizen; (2) be a legal resident of the county where he or she seeks to register; (3) be at least 18 years old; and (4) not be serving a sentence for a felony conviction involving moral turpitude or have been found mentally incompetent by a judge. Ga. Const. art. II, § 1. Plaintiffs observe that none of those requirements include presenting a Photo ID, and that a Photo ID therefore cannot be material to determining whether an individual is qualified under State law to vote. In any event, Plaintiffs argue that because the Photo ID requirement does not apply to most absentee voters, the Photo ID requirement cannot be said to be "material" for purposes of 42 U.S.C.A. § 1971(a)(2)(B).

Defendants contest these assertions and argue that Plaintiffs' claim must fail because the Photo ID requirement does not add any condition on voter qualifications and that there is no error or omission on any record that is being used to disqualify any potential voter. Further, Defendants point out that a legislature traditionally has been allowed to reform state law one step at a time and therefore, the General Assembly may address one potential avenue for voter fraud at a time.

Plaintiffs cited no case law and provided limited information in support of this claim at the preliminary injunction hearing. At this point, the Court simply cannot determine whether Plaintiffs have a substantial likelihood of succeeding on the merits of this claim. Because Plaintiffs may be able to present sufficient evidence and authority to succeed on this claim at a later stage of the proceedings, the Court will not rule on the merits of the claim at this time.

5. Voting Rights Act of 1965

Finally, Plaintiffs argue that the Photo ID requirement violates Section 2 of the Voting Rights Act, 42 U.S.C.A. § 1973(a). That statute provides, in relevant part: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section." 42 U.S.C.A. § 1973(a). 42 U.S.C.A. § 1973(b) sets forth the requirements for establishing a violation of § 1973(a), and states:

> A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office

> in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C.A. § 1973(b).

Plaintiffs assert a claim of vote denial under § 1973(a), rather than a claim of vote dilution. The Supreme Court, however, has observed that Section 2 of the Voting Rights Act prohibits all forms of voting discrimination, not simply vote dilution. *Thornburg v. Gingles,* 478 U.S. 30, 45 n. 10, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). After the 1982 amendments to the Voting Rights Act, a plaintiff asserting a violation of Section 2 need not present "proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters." *Id.* at 44, 106 S.Ct. 2752. Instead, the plaintiff must show that " 'as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.' " *Id.* The Supreme Court has observed:

> In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities "on the basis of objective factors." The Senate Report specifies factors which typically may be relevant to a § 2 claim: the history of voting-related discrimination in the State or political

subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly vote dilution claims, other factors may also be relevant and may be

> considered. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Rather, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" ' and on a "functional" view of the political process.

Id. at 44-45, 106 S.Ct. 2752 (citations omitted; footnote omitted). "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Id.* at 47, 106 S.Ct. 2752.

Similarly, in *Johnson v. Governor of the State of Florida,* 405 F.3d 1214 (11th Cir.2005), the United States Court of Appeals for the Eleventh Circuit observed:

> Vote denial occurs when a state employs a "standard, practice, or procedure" that results in the denial of the right to vote on account of race. To prevail, a plaintiff must prove that "under the totality of the circumstances, ... the political processes ... are not equally open to participation by [members of a protected class] ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." In making

> this inquiry, courts consider a non-exclusive list of objective factors (the "Senate factors") detailed in a Senate Report accompanying the 1982 amendments.

405 F.3d at 1228 n. 26 (citations omitted) (alterations and omissions in original).

Plaintiffs have presented declarations and Census data in support of their § 2 vote denial claim. Specifically, Plaintiffs point to socio-economic data from the 2000 Census indicating that in Georgia: (1) 17.3 percent of African-American households have an income of less than $10,000, compared to 7.4 percent of Caucasian, non-Hispanic households; (2) an additional 16.0 percent of African-American households have incomes between $10,000 and $19,999, compared to 10.1 percent of Caucasian, non-Hispanic households; (3) 27.5 percent of African-Americans ages twenty-five or older have less than a high school education, including general equivalency degrees, as compared with 17.3 percent of Caucasian, non-Hispanics ages twenty-five or older; (4) 23.1 percent of African-Americans of all ages live below the poverty line, compared to 7.8 percent of Caucasian, non-Hispanic individuals; (5) 24.7 percent of African-Americans ages sixty-five through seventy-four live below the poverty line, as compared to 7.8 percent of Caucasian, non-Hispanic individuals in the same age group; (6) 32.1 percent of African-Americans aged seventy-five and over live below the poverty line, as compared to 12.9 percent of Caucasian, non-Hispanic individuals aged seventy-five or over; (7) 17.7 percent of African-American households have no vehicle available, as compared to 4.4 percent of Caucasian, non-Hispanic households; and (8) only one of the eight Georgia counties with the highest percentage of African-American residents-sixty percent or higher-has a DDS service center. Plaintiffs also plan to present data indicating that in Georgia, 11.0 percent of Caucasians, 26.0 percent of African-Americans, and 30.0 percent of Latinos live below the poverty line. Plaintiffs argue that this evidence is sufficient to show depressed political participation by minorities and to demonstrate that the Photo ID requirement will discourage voting by minority voters.

At this point, however, the Court simply cannot agree with Plaintiffs that the evidence is sufficient to demonstrate that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their § 2 vote denial claim. The Court therefore is reluctant to grant preliminary injunctive relief to Plaintiffs based on their § 2 vote denial claim. Recognizing that Plaintiffs may be able to produce sufficient evidence at a later stage of the proceedings to support their § 2 vote denial claim, the Court reserves a final ruling on the merits of that claim for a later date.

B. Irreparable Harm

The Court next addresses the second factor for obtaining a preliminary injunction-whether Plaintiffs will suffer irreparable harm if the Court does not enter a preliminary injunction. For the reasons discussed *supra* Part III.A., the Court concludes that the Photo ID requirement unduly burdens the fundamental right to vote, and likely will cause a number of Georgia voters to be unable to cast a vote and to have their votes counted. The

Court also concludes that the Photo ID requirement constitutes a poll tax.

Although Defendants argue that the Photo ID requirement will not deprive a single Georgia voter of the right to vote, because voters without Photo IDs can vote absentee ballots, as a practical matter, a significant number of the registered Georgia voters who lack Photo IDs likely are unaware of that alternative or would not be able to navigate the absentee ballot voting process successfully. Voters who lack Photo IDs and are unaware of the absentee voting alternative, yet still desire to vote, must undertake the often difficult and burdensome process of obtaining a Photo ID card. Still others who can navigate this process successfully either must pay a fee for a Photo ID card or sign an Affidavit swearing that they are indigent and do not have the funds to pay for the card-whether or not that statement is true-to obtain a free Photo ID card. The Photo ID requirement thus has the likely effect of causing a significant number of Georgia voters to forego going to the polls or to forego obtaining and voting an absentee ballot. For the reasons discussed above, the Court finds that Plaintiffs have demonstrated that they or their constituents will suffer irreparable harm if the Court declines to enter a preliminary injunction. This factor therefore weighs in favor of granting Plaintiffs' Motion for Preliminary Injunction.

C. Threatened Injury to Plaintiffs Weighed Against the Damage to the State Caused by a Preliminary Injunction

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a preliminary injunction. Defendants presented evidence that the entry of a preliminary injunction likely will result in confusion for voters, poll workers, and elections officials, and may result in an inconsistent application of the identification requirements. Defendants have pointed out that it will be extremely difficult for the Elections Division to produce new voter certificates and posters and for all local elections officials to receive sufficient numbers of voter certificates and posters for polling locations. Further, Defendants' evidence indicates that local elections officials lack sufficient time to conduct training for poll workers and to educate the public.

The Court certainly appreciates and understands the inconvenience and expense that entering a preliminary injunction may work upon the State and Defendants. The Court, however, is mindful that the right to vote is a fundamental right and is preservative of all other rights. Denying an individual the right to vote works a serious, irreparable injury upon that individual. Given the right at issue and the likely injury caused by not entering a preliminary injunction, the Court finds that the potential injury to Plaintiffs outweighs the harm to the State and Defendants caused by entering a preliminary injunction. This factor therefore counsels in favor of entering a preliminary injunction.

D. Public Interest

Finally, the Court must determine whether issuing a preliminary injunction will serve the public interest. At the outset, the Court acknowledges that preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes counted in any given election. As discussed *supra* Part III.A., however, the current Photo ID requirement simply is not targeted toward eliminating or preventing the only types of voter fraud that are supported by the evidence presented thus far: fraudulent voter registrations and fraudulent absentee voting. Rather, HB 244 opens the door wide for fraudulent absentee voting by removing the conditions for obtaining an absentee ballot. As discussed *supra* Parts III.A.2. and A.3., the Photo ID requirement unduly burdens the right of many properly registered Georgia voters to vote, is a poll tax, and has the likely effect of causing many of those voters to forego voting or of precluding those voters from voting at the polls. Because the right to vote is a fundamental right, removing the undue burdens on that right imposed by the Photo ID requirement serves the public interest. This factor therefore counsels in favor of granting Plaintiffs' Motion for Preliminary Injunction.

E. Summary

In sum, the Court finds that the four factors for granting a preliminary injunction weigh in favor of Plaintiffs. In particular, the Court concludes that Plaintiffs have a substantial likelihood of success on the merits of their claim that the Photo ID requirement unduly burdens the right to vote and a substantial likelihood of success on the merits of their claim that the Photo ID requirement constitutes a poll tax. The Court also finds that Plaintiffs and their constituents will suffer irreparable harm if the Court does not grant a preliminary injunction, and that the threatened harm to Plaintiffs outweighs the injury to

Defendants and the State that will result from issuing a preliminary injunction. Finally, the Court finds that entering a preliminary injunction will serve the public interest. Consequently, the Court grants Plaintiffs' Motion for Preliminary Injunction.

In reaching this conclusion, the Court observes that it has great respect for the Georgia legislature. The Court, however, simply has more respect for the Constitution. Because the Court finds that Plaintiffs have a substantial likelihood of succeeding on their claims that the Photo ID requirement unduly burdens the right to vote and constitutes a poll tax, the Court must enter a preliminary injunction against the Photo ID requirement.[10]

For instance, *Blackwell* involved a challenge to an Ohio law implementing HAVA that required individuals who registered to vote by mail and who did not submit acceptable documentary proof of identity with their voter applications to provide "acceptable documentary proof" of their identities prior to voting. 340 F.Supp.2d at 826. Such proof could include "a current and valid photo identification," or "[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows [the voter's] name and address." *Id.*

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[10] The Court acknowledges that its conclusion differs from the decisions reached in *League of Women Voters v. Blackwell,* 340 F.Supp.2d 823 (N.D.Ohio 2004), *Bay County Democratic Party v. Land,* 347 F.Supp.2d 404 (E.D.Mich.2004), and *Colorado Common Cause v. Davidson,* No. 04CV7709, 2004 WL 2360485 (D.Colo. Oct. 18, 2004). All of those cases, however, involved identification requirements that allowed voters to show means of identification other than Photo IDs. Georgia's Photo ID requirement, however, applies to in-person voting and goes one step further than the laws challenged in *Blackwell, Bay County Democratic Party,* and *Colorado Common Cause.*

Bay County Democratic Party, in turn, involved a challenge to directives issued to Michigan local elections officials concerning casting and tabulating provisional ballots, as well as a directive pertaining to proof of identity for first-time voters who registered by mail. 347 F.Supp.2d at 410-11. The directive concerning proof of identity for first-time in-person voters who registered by mail was revised to allow those voters to furnish the identification required by HAVA either at the polls or during a six-day period after election day. *Id.* at 434. The HAVA requirements, however, allowed individuals who registered by mail to present a current, valid Photo ID or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." 42 U.S.C.A. § 15483.

Finally, *Colorado Common Cause* also involved identification requirements that permitted voters to show several forms of identification, including: (1) a valid Colorado driver's license; (2) a valid ID card from the Colorado Department of Revenue; (3) a valid United States passport; (4) a valid government employee Photo ID; (5) a valid pilot's license; (6) a valid United States military Photo ID; (7) a copy of a current utility bill, a bank statement, government check, paycheck, or other government document showing the voter's name and address; (8) a valid Medicaid or Medicare card; (9) a certified copy of a birth certificate; or (10) certified documentation of naturalization. 2004 WL 2360485, at *6. The *Colorado Common Cause* court observed that the identification requirement was intended to reduce voter fraud, and concluded that the identification requirement was reasonably related to the interest proffered by the state and was not unduly burdensome. *Id.* at *10.

The identification requirements used by Ohio, Michigan, and Colorado, however, are of little relevance to the case now before the Court because those requirements are much less stringent than Georgia's Photo ID-only requirement. Each of the requirements challenged in *Blackwell, Bay County Democratic Party,* and *Colorado Common Cause* allowed voters to produce alternative forms of identification as well as Photo IDs. If Georgia's voter identification law permitted use of such alternative means of identification for purposes of in-person voting, Plaintiffs likely would not have filed this case. In sum, given the unique nature of Georgia's Photo ID requirement, the Court finds *Blackwell, Bay County Democratic Party,* and *Colorado Common Cause* cases unpersuasive. The Court therefore declines to follow those cases.

IV. Conclusion

ACCORDINGLY, the Court **GRANTS** Plaintiffs' Motion for Preliminary Injunction [2][23], and **ENJOINS** and restricts Defendants individually and in their official capacities from enforcing or applying the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53, Section 59), which requires voters to present a Photo ID as a pre-condition to in-person voting in Georgia, to deny Plaintiffs or any other registered voter in Georgia admission to the polls, a ballot, or the right to cast their ballots and to have their ballots counted in any special, general, run off, or referenda election in the State of Georgia because of their failure or refusal to present a Photo ID.

It is so ORDERED, this the 18th day of October 2005.

Harold L. Murphy
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Case No. CIVA 4:05CV0201 HLM
July 14, 2006

COMMON CAUSE/GEORGIA, ET AL.,
PLAINTIFFS,

V.

EVON BILLUPS, ET AL.,
DEFENDANTS.

ORDER

HAROLD L. MURPHY, District Judge.

This case is an action to have the photo identification ("Photo ID") requirement set forth in Senate Bill 84 ("The 2006 Photo ID Act"), declared unconstitutional both on its face and as applied, and to enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article II, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)). This case is before the Court on Plaintiffs' Second Motion for Preliminary Injunction [108].

I. Procedural Background

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs initially asserted that the Photo ID requirement in the 2005 Amendment to O.C.G.A. § 21-2-417 (Act No. 53) ("The 2005 Photo ID Act") violated the Georgia Constitution, was a poll tax that violated the Twenty-fourth Amendment and the Equal Protection Clause, unduly burdened the fundamental right to vote, violated the Civil Rights Act of 1964, and violated Section 2 of the Voting Rights Act of 1965.

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims. Finally, on October 12, 2005, Plaintiffs filed their First Amendment to Complaint, which addressed the issue of standing for the organizational Plaintiffs.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions.

On October 18, 2005, the Court entered an Order granting Plaintiffs' Motion for Preliminary Injunction and finding that Plaintiffs had a substantial likelihood of success on their claims that the 2005 Photo ID Act unduly burdened the right to vote, and that the 2005 Photo ID Act constituted a poll tax. (Order of Oct. 18, 2005.) On October 19, 2006, the Court denied the State Defendants' Motion to Dismiss Individual Capacity Claims. (Order of Oct. 19, 2005.) On October 20, 2005, The Court denied the State Defendants' Motion to Stay Preliminary Injunction Pending Appeal. (Order of Oct. 20, 2005.)

The State Defendants appealed the October 18, 2005, Order to the United States Court of Appeals for the Eleventh Circuit, requesting that the Eleventh Circuit stay the Court's October 18, 2005, Order pending resolution of the appeal. On October 27, 2005, the Eleventh Circuit denied the State Defendants' Motion to stay the October 18, 2005, Order pending resolution of the appeal.

In January 2006, the Georgia General Assembly passed the 2006 Photo ID Act, which Governor Purdue signed into law. On February 23, 2006, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. In that Motion, Plaintiffs sought permission to amend their First Amended to Complaint to assert claims that both the 2005 Photo ID Act and the 2006 Photo ID Act violated the Georgia Constitution, the federal Equal Protection Clause, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964, and Section 2 of the Voting Rights Act of 1965. On March 2, 2006, the Court held a telephone conference with counsel to discuss the issues relating to preclearance of the 2006 Photo ID Act by the United States Department of Justice ("DOJ"). The Court stayed the proceedings in this case pending notification of the DOJ's decision concerning preclearance of the 2006 Photo ID Act. (Order of Mar. 2, 2006.)

On April 21, 2006, Secretary of State Cathy Cox filed a Notice of Section 5 Preclearance of Act 432 (SB 84). On that same day, the Court entered an Order lifting the stay in this case, and setting forth a briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction. (Order of Apr. 21, 2006.) On April 26, 2006, Plaintiffs filed their Second Amended Complaint.

On May 5, 2006, Plaintiffs filed a Motion to Revise Scheduling Order of April 21, 2006, pending the State Election Board's adoption of rules and regulations implementing the 2006 Photo ID Act, and pending DOJ preclearance of those rules and regulations. On that same day, the Court approved a Consent Order revising the briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction to require Plaintiffs to file that Motion within ten days after the rules and regulations adopted by the State Election Board received preclearance from DOJ. (Order of May 5, 2006.)

On May 10, 2006, Secretary of State Cathy Cox and the State Election Board filed a Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief in Part. On May 25, 2006, Plaintiffs filed a Second Motion for Order to Certify Questions of State Law to the Georgia Supreme Court. On June 29, 2006, the Court entered an Order granting the Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief in Part, dismissing Counts One and Three of Plaintiffs' Second Amended Complaint, as well as the portions of Counts Two, Five, and Six of Plaintiffs' Second Amended Complaint that challenged the 2005 Photo

ID Act. (Order of June 29, 2006.) In that same Order, the Court denied Plaintiffs' Second Motion for Order to Certify Question of Law to the Georgia Supreme Court. (*Id.*)

After the Court's June 29, 2006, Order, the following claims asserted in Plaintiffs' Second Amended Complaint remain pending. In Count Two of their Second Amended Complaint, Plaintiffs contend that the Photo ID requirement imposes an undue burden on the right to vote, in violation of the Equal Protection Clause. (Second Am. Compl. ¶¶ 89-91.) In Count Four of their Second Amended Complaint, Plaintiffs assert that the 2006 Photo ID Act is an unconstitutional poll tax if it is construed or applied to require voters to pay a fee for a birth certificate or other documents to obtain a Georgia voter Photo ID card. (*Id.* ¶¶ 96-97.) In Count Five of their Second Amended Complaint, Plaintiffs allege that the Photo ID requirement violates the Civil Right Act of 1964, as set forth in 42 U.S.C.A. §§ 1971(a)(2)(A) and 1971(a)(2)(B). (*Id.* ¶¶ 98-102.) Finally, in Count Six of their Second Amended Complaint, Plaintiffs assert that the Photo ID requirement violates Section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973(a). (*Id.* ¶¶ 103-106.)

On June 30, 2006, following a telephone conference with counsel, the Court entered an Order setting forth the briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction, and directing the parties to appear before the Court for a hearing on the Motion at 10:00 a.m. on July 12, 2006. (Order of June 30, 2006.)

On July 5, 2006, Plaintiffs filed their Second Motion for Preliminary Injunction. Plaintiffs have sought to have the 2006 Photo ID Act declared invalid, both on its face and as applied, and to enjoin its enforcement. Plaintiffs contend that the 2006 Photo ID Act imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of Article II, section I, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the United States Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. §§ 1971(a)(2)(A) and (a)(2)(B)), Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)), and 42 U.S.C.A. §§ 1983 and 1988. Plaintiffs request that the Court enter a preliminary injunction that prohibits Defendants from: (1) enforcing or attempting to enforce or apply the 2006 Photo ID Act and the regulations issued by the State Election Board under that Act at any elections in Georgia; or (2) discouraging, interfering with, or preventing any person who is lawfully registered from voting in person in any such elections, pending a final trial on the merits or a further Order from the Court. Plaintiffs request that the Court enjoin Defendants "and all state or local election officials be further enjoined from making any public announcement or statements or other communications that advise registered voters or election officials in Georgia that registered voters may not cast a ballot in any election if the voter does not have one of the forms of photo identification specified in the 2006 Photo ID Act." (Pls.' Mot. Second Prelim. Inj. at 2.) Plaintiffs also ask the Court to order and direct Defendants "to send prompt written notice to each of the 675,000 registered voters who have been identified by the Secretary of State as not having Georgia driver's licenses, informing them that they are not required to present photographic identification as a condition to being admitted to the polls or allowed to vote and that they will not be discouraged, interfered with, or otherwise prevented from voting in person by defendants or other election officials on the ground that they are unable to present photographic identification to election officials at the polls." (*Id.* at 2-3.)

On July 7, 2006, the State Election Board filed a Motion to Dismiss Plaintiffs' Second Motion for Preliminary Injunction and to Cancel Hearing. That Motion to Dismiss followed a temporary restraining order issued by the Superior Court of Fulton County, Georgia, on July 7, 2006, enjoining the defendants in that case from enforcing the 2006 Photo ID Act during the July 18, 2006, primary election or any resulting run-off election. *Lake v. Perdue,* Civil Action File No.2006CV119207, slip op. at 3-4 (Fulton County Super.Ct. July 7, 2006.) The plaintiffs in *Lake* had argued that the 2006 Photo ID Act violated the Georgia Constitution. On July 10, 2006, following a telephone conference with counsel, the Court entered an Order indicating that the Court would postpone the July 12, 2006, preliminary injunction hearing in this case if the Supreme Court of Georgia entered an Order denying the *Lake* defendants' request to stay the temporary restraining order in that case prior to July 12, 2006. (Order of July 12, 2006.)

On July 12, 2006, the Court held a hearing concerning Plaintiffs' Second Motion for Preliminary Injunction. Near the conclusion of the hearing, counsel received information that the Georgia Supreme Court had denied the *Lake* defendants' request to stay the temporary restraining order in that case, leaving the temporary restraining order in place for at least thirty days.

At the conclusion of the July 12, 2006, hearing, the Court orally granted Plaintiffs' Second Motion for Preliminary Injunction with respect to Plaintiffs' claim under the Equal Protection Clause. This Order formally sets forth the Court's findings and conclusions concerning Plaintiffs' Section Motion for Preliminary Injunction.

II. Factual Background

A. Plaintiffs' Allegations

1. Allegations Noted in the October 18, 2005, Order

In the Court's October 18, 2005, Order, the Court set forth information concerning Plaintiffs' allegations with respect to the 2005 Photo ID Act. The Court incorporates that portion of the October 18, 2005, Order into this Order in the event that any of those allegations are relevant to this Order. (Order of Oct. 18, 2005, at 3-22.)

2. The Parties

Plaintiff Common Cause/Georgia is a chapter of Common Cause, Inc. (Second Am. Compl. ¶ 1(a).) Common Cause is a non-partisan citizen lobby organized as a not-for-profit corporation under the laws of the District of Columbia, and is devoted to causes such as electoral reform, ethics in government, and the protection and preservation of the rights of all citizens to vote in national, state, and local elections, including educating voters about voting rights and procedures. (*Id.*)

Plaintiff League of Women Voters of Georgia is a non-partisan Georgia non-profit corporation that was founded in 1920. (Second Am. Compl. ¶ 1(b).) Plaintiff League of Women Voters of Georgia's purpose is to encourage the informed and active participation by citizens in government at all levels, including the protection of the right of all citizens to vote and the education of voters about voting rights and procedures. (*Id.*)

Plaintiff The Central Presbyterian Outreach and Advocacy Center, Inc. is a Georgia non-profit corporation that provides support to people in poverty, including emergency services for basic human needs and assistance in achieving self-sufficiency, including assisting individuals in obtaining photo identification. (Second Am. Compl. ¶ 1(c).)

Plaintiff Georgia Association of Black Elected Officials, Inc. is an unincorporated association of more than 700 elected officials throughout the State of Georgia who regularly conduct election campaigns and seek the votes of all registered, eligible voters. (Second Am. Compl. ¶ 1(d).) It also promotes voter registration, education, and participation, preserves minority voting rights, and fights to ensure that no qualified voters are turned away on Election Day for failure to possess a photo ID card, or because of any other undue burden, in violation of their right to vote. (*Id.*)

Plaintiff the National Association for the Advancement of Colored People ("Plaintiff NAACP"), through its Georgia State Conference of Branches, is the nation's oldest civil rights organization. (Second Am. Compl. ¶ 1(e).) Plaintiff NAACP was formed in 1909 by a multiracial group of activists, and has nationwide membership as well as members and offices in Georgia. (*Id.*) Plaintiff NAACP has advocated for the advancement and protection of voting rights for minorities, and, throughout its history, has fought for access to the ballot, for its members and for others. (*Id.*) It also has fought to ensure that racial minorities, low income people, and economically disadvantaged people have access to the ballot box and an equal opportunity to participate in the political process. (*Id.*)

Plaintiff Georgia Legislative Black Caucus ("Plaintiff GLBC") was formed in 1966 and consists of elected African-American members of the House and Senate of the Georgia General Assembly. (Second Am. Compl. ¶ 1(f)). Plaintiff GLBC's members, as elected representatives, engage in election campaigns, seek votes of registered, eligible voters, and also seek to make certain that the right to vote of all eligible citizens is protected and that no eligible voters are discouraged or prevented from voting on election day for failure to possess a Photo ID card in violation of their right to vote. (*Id.*)

Plaintiff Concerned Black Clergy of Metropolitan Atlanta, Inc. is a non-partisan, interfaith religious organization of mostly African-American members and laity whose mission is to provide leadership, advocacy, and service to the poor, the homeless, and the helpless in the metropolitan Atlanta area, including protecting their rights as citizens to full participation in the democratic process, including the right to register and vote without undue interference. (Second Am. Compl. ¶ 1(g).)

Plaintiff National Council of Jewish Women, Inc. ("NCJW") is a volunteer organization that is inspired by Jewish values. (Second Am. Compl. ¶ 1(h).) Plaintiff NCJW works to improve the quality of life for women, children, and families, as well as to ensure individual and civil rights and freedoms for all through a network of 90,000 members, supporters, and volunteers nationwide. (*Id.*)

All of the above Plaintiffs are non-profit organizations composed of members who would have standing to sue in their individual right for the allegations set forth in the Second Amended Complaint. (Second Am. Compl. ¶ 1(i).) The interests that those Plaintiffs and their members seek to protect in the Second Amended Complaint are germane to the purpose of each of those Plaintiffs, and neither the claim asserted nor the relief sought requires participation by the individual members of those Plaintiffs. (*Id.*)

Plaintiff Clara Williams is an African-American and duly qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia. (Second Am. Compl. ¶ 2.) Plaintiff Williams does not possess a Georgia driver's license, passport, or other form of government issued Photo ID, or any other form of photographic identification specified in the 2006 Photo ID Act. (*Id.*)

Defendant Evon Billups is the Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County, Georgia, and is charged with the duty of conducting elections in Floyd County, Georgia, and the City of Rome, Georgia. (Second Am. Compl. ¶ 3(a)(i).) Plaintiffs have sued Defendant Billups in her individual and official capacities. (*Id.*)

Defendant Tracy Brown is the Superintendent of Elections for the Board of Elections and Voter Registration for Bartow County, Georgia, and is charged with the duty of conducting elections in Bartow County, Georgia. (Second Am. Compl. ¶

3(a)(ii).) Plaintiffs have sued Defendant Brown in her official and individual capacities. (*Id.*)

Defendants Gary Petty, Michelle Hudson, Amanda Spencer, Ron McKelvey, and Nina Crawford are members of the Board of Elections and Voter Registration for Catoosa County, Georgia, and are charged with the duty of conducting elections in Catoosa County, Georgia. (Second Am. Compl. ¶ 3(a)(iii).) Plaintiffs have sued those Defendants in their official and individual capacities. (*Id.*)

Defendant Judge John Payne is the Superintendent of Elections for the Board of Registrars for Chattooga County, Georgia, and is charged with the duty of conducting elections in Catoosa County, Georgia. (Second Am. Compl. ¶ 3(a)(iv).) Plaintiffs have sued Defendant Payne in his official and individual capacities. (*Id.*)

Defendant Shea Hicks is the Superintendent of Elections for the Board of Elections and Registrations for Gordon County, Georgia, and is charged with the duty of conducting elections in Gordon County, Georgia. (Second Am. Compl. ¶ 3(a)(v).) Plaintiffs have sued Defendant Hicks in her official and individual capacities. (*Id.*)

Defendant Jennifer A. Johnson is the Superintendent of Elections for the Board of Elections and Voter Registration for Polk County, Georgia, and is charged with the duty of conducting elections in Polk County, Georgia. (Second Am. Compl. ¶ 3(a)(vi).) Plaintiffs have sued Defendant Johnson in her official and individual capacities. (*Id.*)

Defendant Sam Little is the Superintendent of Elections for the Board of Elections and Registration for Whitfield County, Georgia, and is charged with the duty of conducting elections in Whitfield County, Georgia. (Second Am. Compl. ¶ 3(a)(vii).) Plaintiffs have sued Defendant Little in his official and individual capacities. (*Id.*)

Defendant Cathy Cox is the Secretary of State for the State of Georgia, and is Chair of the State Election Board. (Second Am. Compl. ¶ 3(a)(viii).) Defendant Cox has been designated as the Chief Election Official for purposes of the federal Help America Vote Act of 2002, and also is the Chief Election Official for purposes of the National Voter Registration Act of 1933. (*Id.*) Plaintiffs have sued Defendant Cox in her individual and official capacities. (*Id.*)

The State Election Board is not specifically named as a Defendant in this action. (Second Am. Compl. ¶ 3(ix).) On October 5, 2005, however, the Court granted a request by the State Election Board to intervene in this action. (Order of Oct. 5, 2005.)

Plaintiffs allege that the superintendents and board members of the city and county boards of elections named in Paragraphs 3(a)(i) through 3(a)(vii) of the Complaint are members of a class that consists of superintendents and members of city and county boards of elections in each of the 159 counties in Georgia, who are so numerous as to make their joinder impracticable. (Second Am. Compl. ¶¶ 3(a), 6.) Plaintiffs seek certification of a defendant class of all superintendents and members of all city and county boards of election in Georgia under Federal Rule of Civil Procedure 23(b)(1) and (b)(2). (*Id.* ¶ 7.)

3. Allegations Concerning Pre-Existing Georgia Law

Prior to the 1998 elections, voters in Georgia, like registered voters in a majority of other states, were not required to present identification as a condition of voting. (Second Am. Compl. ¶ 9.) In 1997, the Georgia General Assembly adopted O.C.G.A. § 21-2-417, which required registered voters in Georgia to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to the polls and of being allowed to vote. (*Id.* ¶ 10.) Prior to its amendment in 2005, O.C.G.A. § 21-2-417 permitted, but did not require, registered voters to present a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. (*Id.* ¶ 11.) Voters, however, remained free to use any of eight other methods of identification for voting, including a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement showing the voter's name and address. (*Id.*) Additionally, voters who did not have, or could not find, one of the seventeen forms of identification specified in former O.C.G.A. § 21-2-417(a), were entitled to be admitted to the polls, to be issued a ballot, and to be allowed to vote simply by signing a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate. (*Id.* ¶ 12.) Plaintiffs contend that this fail-safe provision was essential to ensure that no voter who possessed the qualifications specified in the Georgia Constitution and who had not been disenfranchised for one of the two reasons provided in the Georgia Constitution would be allowed to vote, thereby avoiding a conflict between the constitutional right to vote and the 1997 voter identification statute. (*Id.* ¶ 13.)

An August 25, 2005, memorandum from the Voting Section of the Department of Justice ("DOJ") indicates that the DOJ granted the 1997 Georgia voter identification statute preclearance under Section 5 of the Voting Rights Act "based on two main factors: (1) the fail-safe procedure ensured that voters were not turned away for lack of authorized identification, and (2) minority contacts did not urge an objection primarily because no voters would be turned away if they did not have proper identification." (Second Am. Compl. ¶ 14 & Ex. A.)

4. The 2005 Photo ID Act

In 2005, the Georgia General Assembly adopted the 2005 Photo ID Act, which amended O.C.G.A. § 21-2-417 to require that all registered voters in Georgia who vote *in person* in all primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, present a government-issued Photo ID to election officials as a condition of being admitted to the polls and before being issued a ballot and being allowed to vote. (Second Am. Compl. ¶ 15.) Representative Sue Burmeister, a Republican, sponsored the bill that became the 2005 Photo ID act. (*Id.* ¶ 16.) Representative Burmeister told the Voting Section of the DOJ "that if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls." (*Id.* ¶ 16 & Exs. A-B.) Plaintiffs assert:

> The real purpose of the 2005 Photo ID Act was and is to perpetuate and entrench control by the Republican Party over elections for state and federal offices at all levels in Georgia by making it easier for white voters to cast absentee ballots and by

> making it more difficult, if not impossible, for voters who are poor, elderly or infirm, to vote, and, most especially, to suppress the number of African-American and other minority voters.

(*Id.* ¶ 17.)

Secretary of State Cox informed the General Assembly and the Governor before the passage of the 2005 ID Act that the Act would open the door even wider to fraud in absentee balloting, while imposing a severe and unnecessary burden on the right to vote for hundreds of thousands of poor, elderly, and minority voters. (Second Am. Compl. ¶ 18 & Exs. C-D.) She noted that there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State and that the greatest concern about fraudulent voting was with respect to absentee voting. (*Id.* ¶ 18 & Exs. C-D.)

Only one of forty-four African-American legislators in both houses of the General Assembly voted in favor of the 2005 Photo ID Act. (Second Am. Compl. ¶ 20.) In the House of Representatives, eighty-nine Republicans and two Democrats voted to approve the Act, while seventy-two Democrats and two Republicans voted against the Act. (*Id.* ¶ 19.) In turn, thirty-one Republicans in the Senate voted to approve the report of the Conference Committee on the Act, while eighteen Democrats and two Republicans voted against it. (*Id.*)

On April 22, 2005, Governor Sonny Perdue signed Act 53, and the Photo ID requirement of Act 53 became effective on July 1, 2005, subject to preclearance by the DOJ. (Second Am. Compl. ¶ 21.) On August 25, 2005, the career staff in the Voting Section of the DOJ recommended denial of preclearance for the mandatory Photo ID requirement in the 2005 Photo ID Act. (*Id.* ¶ 22 & Ex. A.) On August 26, 2005, the DOJ granted preclearance. (*Id.* ¶ 22 & Ex. E.)

At the same time that the General Assembly voted to require the presentation of a Photo ID for voting, the General Assembly also voted to amend O.C.G.A. § 40-5-103(a) to double the minimum fee for a Photo ID from $10 to $20 for a five-year Photo ID, and to authorize a new ten-year Photo ID for $35. (Second Am. Compl. ¶ 23.) The General Assembly also voted to amend O.C.G.A. § 21-2-380(b) to make it easier for voters to obtain absentee ballots. (*Id.*)

After adopting Act 53, Georgia became one of only two states that requires registered voters to present a Photo ID as an absolute condition of being admitted to the polls and being allowed to cast a ballot in federal, state, and local elections. (Second Am. Compl. ¶ 24.) Twenty-six states do not require registered voters to present any form of identification as a condition of admission to the polls or to cast a ballot. (*Id.*) Twenty-four states require voters to present some form of identification of the polls. (*Id.*) Of those states requiring identification, only Georgia requires that voters present a Photo ID as the sole method of identification as a condition of voting, with no fail-safe alternative. (*Id.*)

5. The 2006 Photo ID Act

In January 2006, a majority of legislators in the Georgia House of Representatives and the Georgia Senate adopted the 2006 Photo ID Act. (Second Am. Compl. ¶ 27.) The 2006 Photo ID Act repealed the 2005 Photo ID Amendment, replacing it with identical Photo ID requirements for in-person voting and a new code section, O.C.G.A. § 21-2-417.1, which requires the Board of Elections in each county to issue a "Georgia voter identification card" containing a photograph of the voter, without charge to voters residing in the county, upon presentation of certain identifying documents. (*Id.*) The 2006 Photo ID Act amended O.C.G.A. § 40-5-103 by striking the previous subsection (d) in the 2005 Photo ID Act, which had required a voter to execute an affidavit of poverty to obtain a Photo ID without charge from the Department of Drivers Services ("DDS"). (*Id.* ¶ 28.) In its place, the 2006 Act substituted a requirement that the voter swear "that he or she desires an identification card in order to vote ... and that he or she does not have any other form of identification that is acceptable under Code § 21-2-417" and to "produce evidence that he or she is registered to vote in Georgia." (*Id.*)

On January 9, 2006, the first day of the 2006 legislative session, the House Committee on Governmental Affairs of the Georgia House of Representatives approved SB 84 by a straight party-line vote of seven to three, sending the bill to the floor of the House. (Second Am. Compl. ¶ 29.) Before the full House considered SB 84, the Atlanta Journal Constitution published an article titled: "Registration in Georgia: Bogus Addresses Clutter Voter Registration Rolls." (Second Am. Compl. ¶ 32.) When SB 84 came up for a vote by the full House, the House did not address the issues of fraud in voter registration and in absentee voting. (*Id.* ¶ 33.) Plaintiffs contend that the manner in which the Georgia General Assembly passed SB 84 illustrates that the motivation behind the bill was purely partisan. (*Id.* ¶ 34.)

On January 24, 2006, the Senate passed SB 84. (Second Am. Compl. ¶ 35.) On January 25, 2006, the House of Representatives passed SB 84. (*Id.*) On January 26, 2006, Georgia's governor, Sonny Perdue, signed the Act. (*Id.*) The General Assembly refused to delay the effective date of the 2006 Photo ID Act until after the 2006 primary and general elections. (*Id.* ¶ 40.) On April 21, 2006, the DOJ precleared the 2006 Photo ID Act.

On January 29, 2006, the Atlanta Journal-Constitution published an article titled, "Absentee Voter Fraud Untouched by ID Law-Most Frequent Form of Cheating May be Eased by Recent Rules." (Second Am. Compl. ¶ 36 & Ex. G.)

Governor Perdue estimated that 300,000 Georgians do not have a driver's license or other acceptable photo identification for voting. (Second Am. Compl. ¶ 43 & Ex. H.) According to Plaintiffs, United States Department of Transportation data indicates that Georgia may have as many as 874,420 citizens of driving age who do not have driver's licenses. (*Id.* ¶ 43.) Plaintiffs contend that census data indicate that 390,414 Georgians of voting age and 242,949 Georgia households do not have access to a car or truck. (*Id.*) According to Plaintiffs, the census data further indicate that the median income of Caucasian households in Georgia is almost twice that of African-American households. (*Id.*) Additionally, according to the census data, twenty-eight percent of African-Americans and twenty-one percent of Hispanics in Georgia live in poverty, as compared to ten percent of Caucasians in Georgia. (*Id.*) The Census Bureau further reported that 140,000 African-American households in Georgia, as compared to 89,000 Caucasian households in Georgia, lacked access to a car. (*Id.*) Finally, the AARP and the League of Women Voters estimated that over 152,000 Georgians who voted in the 2004 general election were over sixty years of age and did not have a Georgia driver's license. (*Id.*)

6. The Statutes Modified or Enacted by the 2006 Photo ID Act

The 2006 Photo ID Act changed O.C.G.A. § 40-5-103(d)(1) to eliminate the affidavit of indigency requirement. That portion of the statute now provides:

> The department shall not be authorized to collect a fee for an identification card from any person:
>
> (1) Who swears under oath that he or she desires an identification card in order to vote in a primary or election in Georgia, and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and
>
> (2) Who produces evidence that he or she is registered to vote in Georgia.

> This subsection shall not apply to a person who has been issued a driver's license in this state.

O.C.G.A. § 40-5-103(d).

The 2006 Photo ID Act also amended the text of O.C.G.A. § 21-2-417. O.C.G.A. § 21-2-417 currently provides:

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

> (1) A Georgia driver's license which was properly issued by the appropriate state agency;
>
> (2) A valid Georgia voter identification card issued under Code Section 21-2-417.1 or other valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector;
>
> (3) A valid United States passport;

(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;

(5) A valid United States military identification card, provided that such identification card contains a photograph of the elector; or

(6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

> (c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-200, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

O.C.G.A. § 21-2-417.

Finally, the 2006 Photo ID Act added O.C.G.A. § 21-2-417.1, which provides:

> (a) Each county board of registrars shall provide at least one place in the county at

which it shall accept applications for and issue Georgia voter identification cards to registered Georgia electors which shall under state law be valid only for purposes of voter identification under Code Section 21-2-417 and available only to registered electors of this state. No fee shall be charged or collected for the application for or issuance of a Georgia voter identification card.

(b) No person shall be eligible for a Georgia voter identification card if such person has a valid unexpired driver's license or identification card issued under Code Section 40-5-100.

(c) The Georgia voter identification card shall be captioned 'GEORGIA VOTER IDENTIFICATION CARD' and shall contain a prominent statement that under Georgia law it is valid only as identification for voting purposes. The Georgia voter identification card shall be laminated, shall contain a digital photograph of the applicant, and shall include the following information:

(1) Full legal name;

(2) Address of residence;

(3) Birth date;

(4) Date identification card was issued;

(5) Sex;

(6) Height;

(7) Weight;

(8) Eye Color;

(9) County where the identification card was issued including a county number to be assigned for each county by the Secretary of State; and

(10) Such other information or identification as required by rule of the State Election Board.

(d) The application for a Georgia voter identification card shall elicit the information required under subsection (c) of this Code section and such other information as may be required by rule of the State Election Board. The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute a felony offense under Code Section 16-10-71, relating to the offense of false swearing.

(e) The board of registrars shall require presentation and verification of the following information before issuing a Georgia voter identification card to a person:

(1) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth;

(2) Documentation showing the person's date of birth;

(3) Evidence that the person is registered to vote in this state; and

(4) Documentation showing the person's name and address of principal residence.

(f) A Georgia voter identification card shall remain valid so long as a person resides at the same address and remains qualified to vote. It shall be the duty of a person who moves his or her residence within the State of Georgia to surrender his or her card to the board of registrars of the county of his or her residence; and such person may after such surrender apply for and receive a new card if such person is otherwise eligible under this Code section. It shall be the duty of a person who moves his or her residence outside the State of Georgia or who ceases to be qualified to vote to surrender his or her card to the board of registrars by which it was issued.

(g) The State Election Board shall provide each county board of registrars with the necessary equipment, forms, supplies, and training for the production of the Georgia

> voter identification cards and shall maintain such equipment.
>
> (h) The State Election Board shall adopt rules and regulations for the administration of this Code section and, without limiting the generality of the foregoing, such rules and regulations may further define or prescribe the types of documentation required under subsection (e) of this Code section.

O.C.G.A. § 21-2-417.1.

7. The Accompanying Rules and Regulations

On June 22, 2006, the State Board of Elections adopted rules and regulations to implement the 2006 Photo ID Act. The State submitted the rules and regulations to the DOJ for review, and the DOJ precleared the rules and regulations on June 27, 2006. The rules and regulations provide:

> 183-1-20.01 Georgia Voter Identification Card
>
> (1) Intent and Purpose. These rules are promulgated pursuant to the authority granted the State Election Board under O.C.G.A. §§ 21-2-417.1 and 21-2-31. It is the intent of the State Election Board to provide for the time, place and manner in which each county Board of Registrars shall issue the Georgia Voter Identification Card to eligible electors and to provide for the acceptable types of documentation necessary to obtain a Georgia Voter

Identification Card. To this end, the State Election Board has promulgated these rules and regulations.

(2) Application for the Georgia Voter Identification Card. Beginning with the July 18, 2006 Party Primary Election each county registrar shall provide the application for the Georgia Voter Identification Card in the form designed and published by the State Election Board or its member designee(s). Any registered voter who meets the criteria in O.C.G.A. § 21-2-417.1 and wishes to obtain a Georgia Voter Identification Card shall be required to submit the information requested in such application. It shall be the responsibility of each county registrar to ensure that each accepted application is complete.

(3) Availability of the Georgia Voter Identification Card

(a) Each county shall provide a place within the voter registrar's primary or main office location, as previously approved by the Department of Justice, to process applications for Georgia Voter Identification Cards and to process and distribute such cards.

(b) Each county registrar's office may provide additional locations or extended hours for processing applications for the Georgia Voter Identification Card and processing and distributing the cards but shall be required to comply with criteria for establishment of additional voter registration places as outlined in 183-1-6-.03(3).

(c) Each county registrar's office shall be open a minimum of eight hours per day on Monday through Friday of the week before the final primary, election, or run-off election day, except for legally observed holidays, and shall otherwise be open during normal business hours of the office in order to allow registered voters to apply for and obtain a Georgia Voter Identification Card.

(d) The voter registrar's office of each county shall provide the application and process the Georgia Voter Identification Card using the equipment, forms, supplies, and written training materials and/or verbal training provided by the State Election Board.

(e) Each county Board of Registrars shall sign and maintain an intergovernmental agreement provided by the State Election Board outlining the use of the equipment.

(4) Documentation required for application and issuance of the Georgia Voter Identification Card.

(a) In accordance with O.C.G.A. § 21-2-417.1(e), the Board of Registrars shall require the presentation and verification of the following information before issuing a Georgia Voter Identification Card:

1. A photo identity document, except that nonphoto identity document is acceptable if it includes both the applicant's full legal name and date of birth;

2. Documentation showing the applicant's date of birth;

3. Evidence that the applicant is registered to vote in the State of Georgia, either by voter precinct card, a new voter registration application or confirmation of voter's record on the statewide voter registration system or by verifying the original application in the voter registrar's office; and

4. Documentation showing the applicant's name and principal residence address.

(b) In determining whether the requirements of O.C.G.A. § 21-2-417.1(e) have been met, the following shall apply:

1. Any of the following which contains a photograph of the applicant shall constitute a photo identity document, as provided in O.C.G.A. § 21-2-417.1(e)(1):

(i) Student ID Card including public or private high school, college, university, or vocational school;

(ii) Transit Card;

(iii) Pilot's License;

(iv) Nursing Home Identification Card;

(v) Employee Identification Card;

(vi) Government Housing Authority Identification Card;

(vii) Any government issued license;

(viii) Any card accepted by local, state or federal government for the provision of benefits; or

(ix) Any card accepted by local, state or federal government for access to buildings.

2. Any of the following shall constitute a nonphoto identity document in lieu of a photo identity document as provided in O.C.G.A. § 21-2-417.1(e)(1) only if it includes both the applicant's full legal name and date of birth:

(i) Original birth certificate or certified copy of birth certificate;

(ii) Certificate of birth registration;

(iii) Voter Registration Application;

(iv) Copy of records filed in court by the applicant or on behalf of the applicant by the applicant's counsel;

(v) Naturalization documents;

(vi) Copy of Marriage License Application;

(vii) A copy of the applicant's State or Federal Tax Return filed for the previous calendar year;

(viii) Any other document issued by local, state, or federal government so long as the document provides a reasonably reliable confirmation of the identity of the applicant;

(ix) Paycheck or paycheck stub bearing the imprinted name of the applicant's employer;

(x) An original of the annual social security statement received by the applicant for current or preceding calendar year;

(xi) An original of a Medicare or Medicaid statement received by the applicant;

(xii) Certified school record or transcript for current or preceding calendar year;

(xiii) Hospital birth certificate;

(xiv) An authenticated copy of a doctor's record of post-natal care; or

(xv) A federal Affidavit of Birth, form DS-10.

3. The registrar shall accept as documentation showing the applicant's date of birth under O.C.G.A. § 21-2-417.1(e)(2) any of the documents described in subparagraph (b)2 above.

4. The registrar shall accept as proof of voter registration under O.C.G.A. § 21-2-417.1(e)(3) the applicant's voter registration application or a voter's precinct card.

5. Any of the documents described in subparagraphs (b)(1) and (2) shall be acceptable as documentation showing the applicant's name and address of principal residence under O.C.G.A. § 21-2-417.1(e)(4) if the documentation contains the applicant's name and address of principal residence. In addition, the registrar shall also accept the following as documentation showing the applicant's name and address of principal residence if the applicant's name and address of principal residence appears on the document:

(i) Voter Precinct Card;

(ii) Utility or cable bill issued within the last sixty (60) days;

(iii) Bank statement issued within the last sixty (60) days;

(iv) Currently valid rental contracts and/or receipts for payments made within the last sixty (60) days for rent payments;

(v) A copy of the applicant's State or Federal income tax return filed for the preceding calendar year;

(vi) Homeowners insurance policy or bill for current or preceding calendar year;

(vii) Mortgage, payment coupon, deed, or property tax bill for current or preceding calendar year;

(viii) Current Automobile Registration Receipt;

(ix) Homestead Exemption documentation; or

(x) W-2 for the preceding calendar year.

6. The application and supporting documentation of any applicant who is denied a Georgia Voter Identification Card shall be immediately forwarded via facsimile and U.S. mail to the State Election Board for automatic review to determine if the applicant has provided reasonably reliable documentary indicia confirming the identity of the applicant in which case the State Election Board shall

direct the voter registrar to issue the Georgia Voter Identification Card.

B. Evidence Submitted by the Parties

1. The October 18, 2005, Order

The Court's October 18, 2005, Order summarizes evidence presented by the parties and hearing testimony from the October 12, 2005, hearing relating to the 2005 Photo ID Act. The Court incorporates that portion of the October 18, 2005, Order into this Order.

2. Exhibits to Plaintiffs' Second Motion for Preliminary Injunction

Plaintiffs submitted as Exhibit B to their Second Motion for Preliminary Injunction the Secretary of State NEWS for June 19, 2006. In that release, the Secretary of State's Office reported that a database match between the State's file of registered voters and the DDS data file of persons issued valid Georgia driver's licenses or Georgia ID cards revealed that 676,246 registered voters either had no record of a driver's license or ID issued, or had their licenses revoked, suspended, canceled, denied, or surrendered.

Plaintiffs submitted as Exhibit C to their Second Motion for Preliminary Injunction the Secretary of State NEWS for June 23, 2006. In that document, the Secretary of State's Office indicated that nearly one-fourth of all registered voters aged sixty-five or over did not have a driver's license or Georgia ID card, and that 33.2 percent of African-American registered voters over age sixty-five did not have a license or Georgia ID. Nearly three-fourths of the voters who lacked driver's licenses or Georgia ID cards were on the active voter roll, meaning that they had voted during the last two election cycles. Although African-Americans comprised 27.8 percent of the voter roll, they represented 35.6 percent of those lacking a driver's license or Georgia ID card.

Plaintiffs attached an April 2, 2005, article from the *Atlanta Journal-Constitution* titled, "Voter ID Bill Likely to Be Law," as Exhibit G to their Second Motion for Preliminary Injunction. The article states that Governor Perdue estimated that 300,000 Georgians 18 or over did not have a driver's license or Photo ID.

Plaintiffs attached as Exhibit I to their Second Motion for Preliminary Injunction a June 30, 2006, article from the *Atlanta Journal-Constitution* titled, "Voter ID Cards Can Be Issued." That article states, in relevant part:

> The Election Board also agreed to spend $211,00 on a voter education campaign. The money will go toward running 30-second radio spots before and after the July primary, creation of an informational brochure after the primary and the production of a two-page letter handed to voters at the polls in July after they vote-all aimed at telling voters to bring photo ID to cast a ballot.
>
> David Worley, the Democratic appointee to the State Election Board, unsuccessfully tried to get the board to mail a letter to some 676,000 people the secretary of state's office identified as registered voters having

> neither a driver's license nor an identification card.
>
> "It accomplishes nothing to hand it to them after voting on Election Day," Worley said.

(Pls.' Second Mot. Prelim. Inj. Ex. I.)

Plaintiffs attached as Exhibit J to their Second Motion for Preliminary Injunction the DOJ Section 5 Recommendation Memorandum dated August 25, 2005, concerning the 2005 Photo ID Act. That memorandum recommends denying preclearance to the 2005 Photo ID Act because the 2005 Photo ID Act would unduly burden minority voters.

3. Would-Be Voter Declarations Submitted by Plaintiffs

Plaintiffs have submitted a number of declarations from would-be voters who assert that the 2006 Photo ID Act will affect them. A number of the voters do not drive or cannot afford a car. (Decl. of Annie Johnson ¶ 7; Second Decl. of Eleanor Whittenburg ¶ 4; Decl. of George Cliatt ¶ 7; Decl. of Irene Laster ¶ 7; Decl. of Larry Dewberry ¶ 7; Decl. of Minnie Bridges ¶ 7; Decl. of Pearl Kramer ¶ 6; Decl. of Rosa Brown ¶ 7.)

Most of the voters do not have a driver's license, passport, tribal Photo ID, or other form of government-issued ID because they have no need for one in their day-to-day lives. (A. Johnson Decl. ¶¶ 4, 7; E. Whittenburg Second Decl. ¶ 4; G. Cliatt Decl. ¶¶ 4, 7; I. Laster Decl. ¶¶ 4, 7; L. Dewberry Decl. ¶¶ 4-7; M. Bridges Decl. ¶¶ 4, 7; P. Kramer Decl. ¶¶ 4, 6; R. Brown Decl. ¶¶ 4, 7.) Quite a few of the voters are African-American. (A. Johnson Decl. ¶ 5; G.

Cliatt Decl. ¶ 5; I. Laster Decl. ¶ 5; L. Dewberry Decl. ¶ 5; M. Bridges Decl. ¶ 5; R. Brown Decl. ¶ 5.) Many of the voters are over sixty-five years old. (A. Johnson Decl. ¶ 1 (seventy-six years old); E. Whittenburg Second Decl. ¶ 1 (will be eighty-five years old on her next birthday); G. Cliatt Decl. ¶ 4 (seventy-four years old); I. Laster Decl. ¶ 1 (eighty-eight years old); M. Bridges Decl. ¶ 1 (eighty-six years old); P. Kramer Decl. ¶ 1 (eighty-one years old); R. Brown Decl. ¶ 1 (seventy-four years old).)

Several of the voters have physical or mental disabilities that make it difficult for them to travel to a registrar's office or a DDS center, to walk for long distances, or to stand in line. (A. Johnson Decl. ¶ 7 (has difficulty taking a bus or walking long distances); E. Whittenburg Second Decl. ¶ 1 (legally blind and walks with assistance of a walker); G. Cliatt Decl. ¶ 7 (poor health and cannot walk long distances); I. Laster Decl. ¶ 7 (arthritis); M. Bridges Decl. ¶ 7 (diabetic and walks with assistance of a walker); P. Kramer Decl. ¶ 6 (visual impairments); R. Brown Decl. ¶ 7 (legally blind).) Others have to rely on family members or friends for transportation, or cannot obtain public transportation to a registrar's office or DDS service center. (A. Johnson Decl. ¶ 7; E. Whittenberg Second Decl. ¶ 1 (must rely on family for transportation; closest family member is thirty-five miles away); L. Dewberry Decl. ¶ 7; M. Bridges Decl. ¶ 7; P. Kramer Decl. ¶ 6; R. Brown Decl. ¶ 7.)

Many of the voters stated that the registrar's offices in their respective counties were several miles from their respective polling places, or that they did not know where their respective registrar's offices were located. (A. Johnson Decl. ¶ 7; G. Cliatt Second Decl. ¶ 7; I. Laster Decl. ¶ 7; L. Dewberry

Decl. ¶ 7; M. Bridges Decl. ¶ 7; P. Kramer Decl. ¶ 6; R. Brown Decl. ¶ 7.) A number of the voters expressed a preference for voting in person or a distrust of the absentee voting process. (A. Johnson Decl. ¶ 10; Second Decl. of Clara Williams ¶¶ 4-7; E. Whittenburg Second Decl. ¶ 6; G. Cliatt Decl. ¶ 10; I. Laster Decl. ¶ 10; L. Dewberry Decl. ¶ 10; M. Bridges Decl. ¶ 10; P. Kramer Decl. ¶ 9; R. Brown Decl. ¶ 10.)

Another voter described problems that she and a group of individuals experienced when attempting to access the GLOW bus and in attempting to obtain information concerning the GLOW bus schedule. (Decl. of Martina Robinson ¶¶ 4-13.)

4. Declarations of Politicians

Plaintiffs have submitted declarations from Dubose Porter and Tyrone Brooks, Sr., Democratic members of the Georgia House of Representatives, and Sam Zamarripa, a Democratic member of the Georgia Senate. (Decl. of Dubose Porter ¶ 2; Decl. of Tyrone Brooks, Sr. ¶ 2; Decl. of Sam Zamarripa ¶ 2.) According to Representative Porter and Senator Zamarripa, political motivations inspired the passage of the 2006 Photo ID Act, which was passed in response to the Court's October 18, 2005, Order enjoining the 2005 Photo ID Act. (D. Porter Decl. ¶¶ 3-4; S. Zamarripa Decl. ¶¶ 3-4.) Representative Porter and Senator Zamarripa contend that the legislature passed the 2006 Photo ID Act in an extremely partisan manner. (D. Porter Decl. ¶¶ 6-8; S. Zamarripa Decl. ¶¶ 8-12.)

Representative Brooks states that voters have expressed distrust of absentee voting, noting that their ballots may not be counted and that their ballots may not be handled in a way that will protect the secrecy of their votes. (T. Brooks Decl. ¶ 3.) Representative Brooks believes that those concerns discourage voters from using absentee voting. (*Id.*)

5. Declarations from Jennifer Owens

Jennifer Owens is the Executive Director of the League of Women Voters of Georgia. (Decl. of Jennifer Owens ¶ 2; Second Decl. of Jennifer Owens ¶ 2.) Her responsibilities include serving as a registered lobbyist for the League of Women Voters, working on voting rights and voter education issues at the Georgia General Assembly. (J. Owens First Decl. ¶ 2; J. Owens Second Decl. ¶ 2.) She served in that capacity during the 2006 General Assembly session. (J. Owens First Decl. ¶ 2; J. Owens Second Decl. ¶ 2.) She also monitors the proceedings of the State Election Board. (J. Owens First Decl. ¶ 2; J. Owens Second Decl. ¶ 2.)

Ms. Owens attended the State Election Board meetings held on September 26, 2005, October 4, 2005, October 21, 2005, December 14, 2005, January 18, 2006, January 31, 2006, March 8, 2006, March 20, 2006, May 17, 2003, June 22, 2006, June 19, 2006, and June 29, 2006. (J. Owens First Decl. ¶ 3; J. Owens Second Decl. ¶ 3.) Ms. Owens observed all proceedings at those meetings other than those proceedings held in closed-door executive sessions. (J. Owens First Decl. ¶ 3; J. Owens Second Decl. ¶ 3.) Ms. Owens does not recall any discussion of a specific case or matter relating to in-person fraudulent voting, or any specific discussion of facts or circumstances that might give rise to such a case or matter. (J. Owens First Decl. ¶ 3; J. Owens Second Decl. ¶ 3.) Instead, the majority of cases brought before the State Election Board related to fraud in absentee voting and in voter registration. (J. Owens First Decl. ¶ 3; J. Owens Second Decl. ¶ 3.)

Based on her experience, Ms. Owens believes that efforts relating to educating voters about SB 84 should be substantial and will require a significant amount of time. (J. Owens First Decl. ¶ 4.) Ms. Owens believes that the current education efforts are insufficient. (*Id.* ¶ 5.)

According to Ms. Owens, the State plans to educate voters by handing voters a letter describing the 2006 Photo ID Act's requirements after the voters arrive at the polls, and purchasing radio spots on a network. (J. Owens Second Decl. ¶ 4.) The radio network only reaches 900,000 adults, not all of whom live in Georgia. (*Id.*) The board rejected other educational proposals and voted not to spend all of the money that the legislature had appropriated for public education. (*Id.*)

According to Ms. Owens, the State Election Board discussed several educational proposals at its June 29, 2006, meeting. (J. Owens Second Decl. ¶ 5.) The Board rejected a mailing to the potential 675,000 individuals identified by the Secretary of State's office as lacking a Georgia driver's license or State-issued Photo ID card. (*Id.*) The Board reasoned that the list of such voters was questionable, and that mailing an education piece to those voters would validate the accuracy of the list. (*Id.*)

The State Election Board also approved a plan to purchase radio advertisements about the 2006 Photo ID Act's Photo ID requirement through an existing State contract. (J. Owens Second Decl. ¶ 6.) The contract includes approximately 100 radio stations; however, the contractor informed the Board that the stations have a combined estimated listener base of

900,000 adults, including listeners in Alabama, Florida, South Carolina, and Tennessee. (*Id.*)

The legislature appropriated approximately $211,000 specifically for voter education. (J. Owens Second Decl. ¶ 7.) The legislature allocated a separate equipment budget of over $1 million to cover the cost of purchasing and implementing the machines in each county. (*Id.*) According to Ms. Owens, on June 19, 2006, $38,965 was moved from the education budget to cover additional costs associated with the purchase of the equipment. (*Id.*) Ms. Owens further states that the estimated cost of the letters to be distributed to precincts on Election Day Is $53,869, plus an additional $3,000 in costs for purchasing and shipping paper to counties outside the Atlanta metropolitan area to allow those counties to make their own copies of the letter. (*Id.*)

6. Declaration of Ron Hockensmith

Ron Hockensmith is the chief librarian for Bondurant, Mixon and Elmore, LLP. (Decl. of Ron Hockensmith ¶ 2.) On May 31, 2006, the law firm requested documents from the Georgia Department of Administrative Services ("DOAS") regarding the bid proposals and contract for providing the equipment necessary to issue the voter ID cards. (*Id.* ¶ 3 & Ex. 1.) In response to that request, DOAS provided the law firm with a CD-ROM containing electronic copies of the contract and bid proposal. (*Id.* ¶ 4 & Ex. 2.)

Exhibit 3 to Mr. Hockensmith's Declaration consists of excerpts from the contract between The Police and Sheriffs Press, Inc. and the State Election Board for the Voter ID card equipment. (R. Hockensmith Decl. ¶ 5 & Ex. 3.) Exhibit 4 to Mr. Hockensmith's Declaration consists of excerpts from

The Police and Sheriffs Press, Inc.'s response to DOAS's request for proposals. (*Id.* ¶ 6 & Ex. 4.)

On May 21, 2006, the law firm requested documents relating to the study done by the Secretary of State to determine the number of registered voters who lack Photo IDs issued by DDS. (R. Hockensmith Decl. ¶ 7 & Ex. 5.) The Secretary of State's Office provided the law firm with copies of documents, audio CDs of State Election Board Meetings, and a CD-Rom. (*Id.* ¶ 8 & Ex. 6.) Exhibit 7 to Mr. Hockensmith's Declaration is a copy of spreadsheets concerning active and inactive voters who were not matched to the DDS records. (*Id.* ¶ 9 & Ex. 7.) Exhibit 8 to Mr. Hockensmith's Declaration consists of e-mails to and from members of the Secretary of State's staff concerning the DDS data-matching study. (*Id.* ¶ 10 & Ex. 8.) Exhibit 9 to Mr. Hockensmith's Declaration is a copy of the transcript of the audio CD of the June 22, 2006, State Election Board meeting. (*Id.* ¶ 11 & Ex. 9.)

Exhibit 3 to Mr. Hockensmith's declaration states that the contract includes "[u]p to 10,000 delivered Voter Identification Cards." (R. Hockensmith Decl. Ex. 3 at 3.) Any additional Voter ID cards will cost $7.00 per card. (*Id.* at 3-4.)

Exhibit 9 consists of a transcript from the June 22, 2006, State Election Board meeting. In the hearing, the Secretary of State's Office recommended using direct mail to notify affected voters. (R. Hockensmith Decl. Ex. 9 at 7-8.) The Secretary of State's Office indicated that the timing of printing and mailing the piece to the voters, however, likely would prevent the piece from arriving until one day before or even after the July 18, 2006, primary. (*Id.* at 11-12.) The transcript also indicates that the 676,246 number reported by the

Secretary of State's Office does not represent the number of people who do not have an acceptable form of Photo ID under SB 84, and that the Secretary of State's Office did not intend for the number to do so. (*Id.* at 30, 55.) Instead, that number represents voters who are eligible for a Voter ID card. (*Id.* at 31-32.) The hearing questions and answers also indicate that the 676,246 number may include individuals who have died. (*Id.* at 34.)

7. Declaration of Sheryl Gowen

On July 6, 2006, Plaintiffs filed a Motion for Leave to File the Declaration of Sheryl Gowen, which the Court granted on July 7, 2006. (Order of July 7, 2006.) Dr. Gowen currently serves as the Chairperson of the Department of Educational Policy Studies in the College of Education at Georgia State University. (Decl. of Sheryl Gowen ¶ 2.) She previously served as the Assistant Director of Georgia State University's Center for the Study of Adult Literacy, as well as the Chairperson of Georgia State University's Department of Learning Support Programs. (*Id.*) She has more than fifteen years of experience in testing and evaluating individuals' reading abilities. (*Id.*)

Dr. Gowen holds a Ph.D. in Communicative Arts Curriculum and Instruction. (S. Gowen Decl. ¶ 4.) According to Dr. Gowen, that is the highest degree available in her field of study. (*Id.*)

Dr. Gowen has authored, or co-authored, over fifteen book chapters, journal articles, newsletters, and reports addressing illiteracy and numeracy. (S. Gowen Decl. ¶ 5.) Dr. Gowen also has given over thirty speeches and presentations concerning subjects and issues relating to literacy. (*Id.*)

According to Dr. Gowen, the United States Department of Education, National Center for Education Policy, published the results of its National Literacy Study ("NALS") in 1993. (S. Gowen Decl. ¶ 6.) The NALS data indicate that twenty-three percent of all adults in Georgia are at Level One literacy, or below basic literacy. (*Id.* ¶ 7.) Those adults possess no more than the most simple and concrete literacy skills. (*Id.*) The NALS data also indicate that another thirty-one percent of adults in Georgia function at Level Two literacy, or basic literacy. (*Id.* ¶ 8.) Those adults can perform only simple and everyday literacy tasks. (*Id.*)

In 2003, the United States Department of Education conducted the National Assessment of Adult Literacy ("NAAL") to measure the changes in adult literacy levels between 1992 and 2003. (S. Gowen Decl. ¶ 10.) According to Dr. Gowen, the NAAL results indicate that the adult population had not significantly improved its literacy skills in prose and documentary literacy. (*Id.*)

Based on the above information, Dr. Gowen opines that more than half of all Georgians read below the tenth grade level. (S. Gowen Decl. ¶ 11.) Dr. Gowen has evaluated the readability of the absentee ballot application, and has opined that the absentee ballot application had a readability level of tenth grade, according to the Flesch-Kincaid Readability Index. (*Id.* ¶¶ 12-14.) According to Dr. Gowen, that level is well above the reading level of fifty-four percent of the adult population in Georgia. (*Id.* ¶ 14.) Stated differently, Dr. Gowen believes that less than forty percent of adults in Georgia are capable of reading and comprehending the absentee ballot application. (*Id.*) Dr. Gowen further opined that fifty-four percent of the adults in Georgia are estimated to function at a level of literacy well below the literacy skills required to comprehend the absentee ballot application, and over half of all Georgia adults could not read, comprehend, and complete the application without assistance. (*Id.* ¶¶ 15-16.)

8. Declarations from Local Elections Officials

a. Declaration of John M. Payne

Defendant John M. Payne has served as the Probate Judge and Elections Superintendent for Chattooga County, Georgia, for thirty-one years. (Decl. of Jon M. Payne ¶ 2.) In his time as an election officer, Mr. Payne has never seen evidence of in-person voter fraud. (*Id.* ¶ 3.) Mr. Payne believes that it would be very difficult for a person to commit in-person voter fraud in Chattooga County because Chattooga County has a small population and the poll workers know most of the voters. (*Id.*) Mr. Payne believes that if in-person voter fraud had occurred, it would have come to his attention. (*Id.* ¶ 4.) Mr. Payne thinks that in-person voter fraud would be easy to detect because most voters are well-known to the poll workers, and it would be likely that the real voter would later come to the polls, be informed he was listed as already voted, and report that fact to election officials. (*Id.*)

Mr. Payne does not believe that in-person voter fraud exists as a problem in Chattooga County. (J. Payne Decl. ¶ 5.) Mr. Payne does not believe that requiring voters to obtain a Voter ID card would do anything to combat in-person voter fraud. (*Id.*) A person could show the same documentation to the registrar to obtain a Voter ID card that he or she could show under the previous law to vote in-person. (*Id.*) Mr. Payne does not believe that showing the same documentation in the Registrar's office is a more reliable way to identify a voter than showing the same documentation at the polling place. (*Id.*) Mr. Payne notes that the precinct workers are more familiar with people in their local areas than the Registrar's office workers are, and it probably is more reliable to have the precinct workers identify the voters before they vote. (*Id.* ¶ 7.)

Mr. Payne believes that a number of voters in Chattooga County do not have Photo ID cards, and will have to travel to the registrar's office to obtain a Voter ID card. (J. Payne Decl. ¶ 8.) Mr. Payne believes that it is especially difficult for people in the rural areas and smaller towns of Chattooga County to come to the registrar's office in Summerville, which is substantially farther from their homes than their normal voting precincts. (*Id.*)

Since the 2006 Photo ID Act went into effect, Chattooga County has issued only two Voter ID cards. (J. Payne Decl. ¶ 9.) Mr. Payne believes that voters have not come in to obtain Voter ID cards because they do not know about the 2006 Photo ID Act's Photo ID requirement. (*Id.*) In Mr. Payne's experience, a massive education effort is required to get information to voters concerning changes in voting procedure, and the State has not made such an effort concerning the 2006 Photo ID Act. (*Id.*)

Mr. Payne believes that given the large number of voters who might need a Voter ID card, his office cannot provide Voter ID cards to all voters who need those before the November election. (J. Payne Decl. ¶ 10.) According to Mr. Payne, his office cannot provide enough Voter ID cards to the voters who require those before the July 18, 2006, primary election. (*Id.*) Mr. Payne believes that requiring voters who do not have an approved form of Photo

ID to obtain a Photo ID in order to vote in person will discourage many voters from voting at all. (*Id.* ¶ 11.)

b. Declaration of Gloria W. Champion

Gloria W. Champion is the Executive Director of the Fulton County Department of Voter Registration and Elections, which is supervised by the Fulton County Board of Registration and Elections (the "Fulton Board"). (Decl. of Gloria W. Champion ¶ 2.) Ms. Champion has served in that position for six and one-half years, and previously served as the Elections Supervisor for the Fulton Board. (*Id.*)

As Executive Director, Ms. Champion generally supervises all election activities under the jurisdiction of the Fulton Board within Fulton County, including voter registration, assigning voters to precincts, maintaining registration records, conducting primary, run-off, and general elections, and federal, state, county, and municipal elected offices in which residents of Fulton County are entitled to vote in accordance with the Georgia election code, answering questions concerning election officials and election districts, compiling election statistics, and operating all polling locations for federal, state, county, and municipal elections. (G. Champion Decl. ¶ 3.)

In-person absentee voting began on June 2, 2006. (G. Champion Decl. ¶ 4.) Voters who used in-person absentee voting were required to present Photo ID, and all did so. (*Id.*) As of July 3, 2006, Fulton County had 168 in-person absentee voters, none of whom lacked a Photo ID. (*Id.* & Ex. 1.)

As of July 3, 2006, Fulton County had mailed out 3,708 absentee ballots, including 1,807 Democratic ballots and 1,651 Republican ballots. (G. Champion

Decl. ¶ 5.) Fulton County has received 374 Democratic ballots and 359 Republican ballots. (*Id.*)

Early voting was scheduled to begin on July 10, 2006. (G. Champion Decl. ¶ 6.) Late in the afternoon of July 7, 2006, the Fulton Board received notification that an injunction had been issued prohibiting the Photo ID requirement, and that the Fulton Board should return to the old law. (*Id.*) The Fulton Board can make appropriate adjustments for advance voting this week because the voting is taking place at only three locations: the main office and the North and South service centers. (*Id.* ¶ 7.)

Ms. Champion's office is fully equipped with the machine, supplies, and personnel needed to issue the Voter ID cards, and her staff have received training concerning producing the cards. (G. Champion Decl. ¶ 8.) Fulton County's main office and its North and South service centers all have equipment, supplies, and personnel to issue the Voter ID cards. (*Id.*) Each of its offices has a set of equipment, including a camera, a computer, and a printer, to produce Voter ID cards, which the State Election Board provided. (*Id.*) Fulton County also has ordered an additional unit for traveling to nursing homes and other locations to issue Voter ID cards for people who may need a Voter ID card but who may have some difficulty in traveling to one of Fulton County's three offices or to a DDS service center. (*Id.* ¶ 9.)

Fulton County trained employees in each office concerning the use of the equipment to produce the Voter ID card. (G. Champion Decl. ¶ 10.) Fulton County's offices began issuing the Voter ID cards on June 30, 2006. (*Id.*) As of July 10, 2006, Fulton County had issued a total of twenty-nine cards. (*Id.*) Fulton County can issue as many temporary Voter

ID cards, which are good for forty-five days, as necessary. (*Id.*)

Ms. Champion's office only received a few calls concerning Voter ID cards. (G. Champion Decl. ¶ 11.) Most calls came from voters who already have driver's licenses but who think they also need a Voter ID card. (*Id.*) When the office receives those calls, the office inquires whether the caller has another form of acceptable Photo ID. (*Id.*) If the caller has another form of acceptable Photo ID, the office advises the caller to use that ID. (*Id.*) If the caller lacks another form of acceptable Photo ID, the office advises the caller concerning how to obtain a Voter ID card. (*Id.*) The office also advises the callers about the availability of no-excuse mail-in absentee voting without a Photo ID, and instructs the callers concerning how to obtain an absentee ballot. (*Id.*) Given the minimal number of inquiries and the few number of callers who lack a Photo ID, Ms. Champion believes that Fulton County has more than sufficient equipment and personnel to fulfill requests for Voter ID cards. (*Id.* ¶ 12.)

According to Ms. Champion, using signature comparison to identify voters at the polls is not reasonable or feasible at the present time. (G. Champion Decl. ¶ 13.) No such mechanism currently is in place, and implementing one would be very costly and would result in a time-consuming process that would create long lines at the polls. (*Id.*) According to Ms. Champion, such a process: (1) depends on the computer system working without fail and on poll workers having good computer skills; (2) assumes the quality of the reproduction is good; and (3) is very time-consuming. (*Id.*) Although Ms. Champion's office does signature comparison for absentee ballots, absentee ballots require fewer comparisons, two original signatures are available for comparison, and the registrar's office can compare signatures as the absentee ballots are received. (*Id.*)

Any voter who requests an absentee ballot via a writing that contains sufficient information for Ms. Champion's office to verify the voter's address and to determine that the voter is a registered voter receives an absentee ballot. (G. Champion Decl. ¶ 14.) Fulton County is "completely current on mailing out absentee ballots," and, if a voter submitted a written request for an absentee ballot today, Fulton County would mail an absentee ballot to that voter today. (*Id.* ¶ 16.)

Ms. Champion further states that no automatic updating of the voter registration rolls occurs on a regular basis. (G. Champion Decl. ¶ 15.) The State can delete deceased voters based on reports generated by the Vital Records Department, using file management; however, each county is responsible for updating its rolls on the statewide system. (*Id.*) The process for updating the rolls varies by county. (*Id.*)

9. Declaration of Linda W. Latimore

Linda W. Latimore is the Director of the DeKalb County Voter Registration and Election Office, and has served in that position for thirteen years. (Decl. of Linda W. Latimore ¶ 2.) She previously served as the absentee ballot clerk in charge of absentee balloting for DeKalb County. (*Id.*)

As Director, Ms. Latimore generally supervises all election activities conducted by DeKalb County, including voter registration, assigning voters to precincts, maintaining registration records, conducting primary, run-off, and general elections, and federal, state, county, and municipal elected offices in accordance with the Georgia election code, answering questions concerning election officials and election districts, compiling election statistics, and operating all polling locations for federal, state, county, and municipal elections. (L. Latimore Decl. ¶ 3.) After the 2006 Voter ID Act passed and the DOJ precleared it, Ms. Latimore's office ordered new election materials from the Elections Division for use during the July 18, 2006, primary, including voter certificates and posters for the polling places that explain the six forms of acceptable Photo ID. (*Id.* ¶ 4.) Although the Elections Division also provided Ms. Latimore's office with the documentation for conducting an election under the old law, her office has made all of its preparations such as training and voter information under the 2006 Photo ID Act. (*Id.*) In particular, Ms. Latimore's office conducted staff training and poll worker training under the 2006 Photo ID Act, and does not have sufficient time to conduct another poll worker training. (*Id.* ¶ 4(a).) Ms. Latimore's office also made efforts to educate the public concerning the Photo ID requirement for in-person voting, using press releases and news conferences. (*Id.* ¶ 4(b).) Although Ms. Latimore's office has received very few telephone calls concerning the Photo ID requirements, her office consistently has answered those questions using the new law. (*Id.* ¶ 5(c).)

In-person absentee voting began on June 2, 2006. (L. Latimore Decl. ¶ 5.) Voters who used in-person absentee voting were required to present Photo ID, and all did so. (*Id.*) As of July 3, 2006, DeKalb County had 571 in-person absentee voters, none of whom lacked a Photo ID. (*Id.*)

As of July 3, 2006, DeKalb County had mailed out 8,923 absentee ballots. (L. Latimore Decl. ¶ 6.) DeKalb County has received 2,235 Democratic ballots and 1,414 Republican ballots. (*Id.*)

Early voting was scheduled to begin on July 10, 2006. (L. Latimore Decl. ¶ 7.) Late in the afternoon of July 7, 2006, Ms. Latimore's office received notification that an injunction had been issued prohibiting the Photo ID requirement, and that her office should return to the old law. (*Id.*) Ms. Latimore can make appropriate adjustments for advance voting this week because the voting is taking place at only six locations: the main office and five satellite offices. (*Id.* ¶ 8.)

Ms. Latimore's office is fully equipped with the machine, supplies, and personnel needed to issue the Voter ID cards, and her staff have received training concerning producing the cards. (L. Latimore Decl. ¶ 9.) Ms. Latimore's office has two sets of equipment, including a camera, a computer, and a printer, to produce Voter ID cards, as well as a second set of equipment on order. (*Id.* ¶ 10.) DeKalb County has supplies to make an unlimited number of Voter ID cards, and has an additional machine to produce Voter ID cards that is mobile for use in locations such as nursing homes. (*Id.*)

As of July 10, 2006, DeKalb County had issued a total of seventeen cards. (L. Latimore Decl. ¶ 11.) Ms. Latimore believes that the equipment already provided by the State will be sufficient to fulfill the anticipated requests for Voter ID cards. (*Id.*) Ms. Latimore's office has received approximately forty telephone calls inquiring about the process Voter ID cards. (*Id.* ¶ 11.)

According to Ms. Latimore, using signature comparison to identify voters at the polls is not reasonable or feasible at the present time. (L. Latimore Decl. ¶ 14.) No such mechanism currently is in place, and implementing one would be very costly and would result in a time-consuming process that would create long lines at the polls. (*Id.*) According to Ms. Latimore, such a process: (1) depends on the computer system working without fail and on poll workers having good computer skills; (2) assumes the quality of the reproduction is good; and (3) is very time-consuming. (*Id.*) Although Ms. Latimore's office does signature comparison for absentee ballots, absentee ballots require fewer comparisons, two original signatures are available for comparison, and the registrar's office can compare signatures as the absentee ballots are received. (*Id.*)

DeKalb County receives absentee ballot applications on a regular basis, and Ms. Latimore has not noted problems with voters being unable to complete the applications correctly. (L. Latimore Decl. ¶ 15.) In any event, a voter need not complete an application form to obtain an absentee ballot. (*Id.*) Any voter who requests an absentee ballot via a writing that contains sufficient information for Ms. Latimore's office to verify the voter's address and to determine that the voter is a registered voter receives an absentee ballot. (*Id.*)

Ms. Latimore further states that no automatic updating of the voter registration rolls occurs on a regular basis. (L. Latimore Decl. ¶ 13.) The State can delete deceased voters based on reports generated by the Vital Records Department, using file management; however, each county is responsible for updating its rolls on the statewide system. (*Id.*) The process for updating the rolls varies by county. (*Id.*)

Finally, Ms. Latimore states that if the Court issues a preliminary injunction for the July 18, 2006, primaries, tremendous confusion for election officials, poll workers, and voters would result. (L. Latimore Decl. ¶ 16.)

10. Second Declaration of Lynn Bailey

Ms. Bailey is the Executive Director of the Richmond County Board of Elections, and has served in that capacity since 1993. (Second Decl. of Lynn Bailey ¶ 2.) As Executive Director, Ms. Bailey supervises all Richmond County elections, as well as elections for municipalities in Richmond County, including Augusta, Blythe, and Hephzibah. (*Id.*)

After the 2006 Voter ID Act passed and the DOJ precleared it, Ms. Bailey's office ordered new election materials from the Elections Division for use during the July 18, 2006, primary, including voter certificates and posters for the polling places that explain the six forms of acceptable Photo ID. (L. Bailey Second Decl. ¶ 3.) The Elections Division also provided Ms. Bailey's office with the documentation for conducting an election under the old law. (*Id.*) Ms. Bailey's office conducted staff training and poll worker training under the 2006 Photo ID Act and under the old law. (*Id.* ¶ 4(a).) Ms. Bailey's office also made efforts to educate the public concerning the Photo ID requirement for in-person voting, using speaking engagements and media outlets. (*Id.* ¶ 4(b).)

In-person absentee voting began on June 5, 2006. (L. Bailey Second Decl. ¶ 4.) Voters who used in-person absentee voting were required to present Photo ID, and all did so. (*Id.*) As of July 7, 2006, Richmond County had ninety-four in-person absentee voters, none of whom lacked a Photo ID. (*Id.*)

As of July 7, 2006, Richmond County had mailed out 647 absentee ballots, including 371 Democratic ballots and 276 Republican ballots. (L. Bailey Second Decl. ¶ 5.) Richmond County has received 55 Democratic ballots and 54 Republican ballots. (*Id.*)

Early voting was scheduled to begin on July 10, 2006. (L. Bailey Second Decl. ¶ 6.) Late in the afternoon of July 7, 2006, Ms. Bailey's office received notification that an injunction had been issued prohibiting the Photo ID requirement, and that the office should return to the old law. (*Id.*) Richmond County has three sites for advance voting, and has swapped the forms at all three sites so that the forms on hand reflect the types of identification allowed under the old law. (*Id.* ¶ 7.) The injunction is the subject of an emergency appeal, and, if another change occurs, Ms. Bailey's office will continue to use media sources to help educate the public concerning that change. (*Id.* ¶ 8.)

Ms. Bailey's office is fully equipped with the machine, supplies, and personnel needed to issue the Voter ID cards, and her staff have received training concerning producing the cards. (L. Bailey Second Decl. ¶ 8.) Ms. Bailey's office has a set of equipment, including a camera, a computer, and a printer, to produce Voter ID cards, which the State Election Board provided. (*Id.*) Based on the demand for Voter ID cards, Ms. Bailey does not anticipate needing additional equipment. (*Id.*) Her office has access to supplies to make an unlimited number of temporary Voter ID cards. (*Id.*)

Ms. Bailey's office has not received complaints concerning voters' inability to obtain Photo ID. (L. Bailey Second Decl. ¶ 11.) The majority of voters in

Richmond County use a driver's license or state ID card to identify themselves at the polls. (*Id.*) As of July 17, 2006, Richmond County had issued forty-five Voter ID cards. (*Id.*)

According to Ms. Bailey, using signature comparison to identify voters at the polls is not reasonable or feasible at the present time. (L. Bailey Second Decl. ¶ 12.) No such mechanism currently is in place, and implementing one would be very costly and would result in a time-consuming process that would create long lines at the polls. (*Id.*) According to Ms. Bailey, such a process: (1) depends on the computer system working without fail and on poll workers having good computer skills; (2) assumes the quality of the reproduction is good; and (3) is very time-consuming. (*Id.*) Although Ms. Bailey's office does signature comparison for absentee ballots, absentee ballots require fewer comparisons, two original signatures are available for comparison, and the registrar's office can compare signatures as the absentee ballots are received. (*Id.*)

Richmond County receives absentee ballot applications on a registered basis, and Ms. Bailey has not noted problems with voters being unable to complete the applications correctly. (L. Bailey Second Decl. ¶ 13.) In any event, a voter need not complete an application form to obtain an absentee ballot. (*Id.*) Any voter who requests an absentee ballot via a writing that contains sufficient information for Ms. Bailey's office to verify that the voter is eligible to receive an absentee ballot is mailed an absentee ballot. (*Id.*) Ms. Bailey believes that evidence of in-person voting fraud would be difficult to find, because there is no set way to track an alleged impersonator after he or she leaves the polling place. (*Id.*)

Ms. Bailey states that making changes in the poll laws and procedures this close to an election is very confusing to workers and voters. (L. Bailey Second Decl. ¶ 14.) If the Court issues a preliminary injunction, there will not be sufficient time before the July 18, 2006, primary to offer additional poll worker training. (*Id.*) Instead, Ms. Bailey's office will inform its poll managers of any changes, and will depend on the poll managers to inform their poll workers of the changes. (*Id.*)

11. Second Declaration of Lynn Ledford

Lynn Ledford is the Elections Supervisor for Gwinnett County, Georgia, and has served in that position for four years. (Second Decl. of Lynn Ledford ¶ 2.) Gwinnett County has the second largest population in Georgia and is one of the fastest growing counties in the United States. (*Id.*) Gwinnett County has approximately 360,000 registered voters, and has more municipalities than any other county in Georgia. (*Id.*) In her capacity as Elections Supervisor, Ms. Ledford supervises all Gwinnett County elections, and serves as the official registrar of voters for municipalities in Gwinnett County. (*Id.* ¶ 3.)

After the 2006 Voter ID Act passed and the DOJ precleared it, Ms. Ledford's office ordered new election materials from the Elections Division for use during the July 18, 2006, primary, including voter certificates and posters for the polling places that explain the six forms of acceptable Photo ID. (L. Ledford Second Decl. ¶ 4.) Ms. Ledford's staff also attended training sessions conducted by the Elections Division, including training concerning the 2006 Photo ID Act's requirements and issuance of Voter ID cards. (*Id.*)

In-person absentee voting began on June 2, 2006. (L. Ledford Second Decl. ¶ 5.) Voters who used in-person absentee voting were required to present Photo ID, and all did so. (*Id.*) As of July 3, 2006, Gwinnett County had 389 in-person absentee voters, none of whom lacked a Photo ID. (*Id.* & Ex. A.)

As of July 7, 2006, Gwinnett County had mailed out a number of absentee ballots, including 738 Democratic ballots and 2427 Republican ballots, and has received 234 Democratic ballots and 756 Republican ballots. (L. Ledford Second Decl. ¶¶ 6-7.)

Early voting was scheduled to begin on July 10, 2006. (L. Ledford Second Decl. ¶ 7.) Late in the afternoon of July 7, 2006, Ms. Ledford's office received notification that an injunction had been issued prohibiting the Photo ID requirement, and that her office should return to the old law. (*Id.*) Ms. Ledford's office can make appropriate adjustments for advance voting this week because the voting is taking place at only three locations: the main office and the North and South service centers. (*Id.* ¶ 8.)

Ms. Ledford's office understands that the State court's injunction is the subject of an emergency appeal. (L. Ledford Second Decl. ¶ 9.) If the injunction is overturned or another change is made, it is very likely that some polling places may require a Photo ID for in-person voting, while other polling places will apply the old law. (*Id.*) The injunction or any change will result in tremendous confusion at the polls. (*Id.*)

Ms. Ledford's office is fully equipped with the machine, supplies, and personnel needed to issue the Voter ID cards, and her staff have received training concerning producing the cards. (L. Ledford Second Decl. ¶ 10.) Ms. Ledford's office has a set of equipment, including a camera, a computer, and a printer, to produce Voter ID cards. (*Id.*) Ms. Ledford's staff received training concerning the use of the machinery that produces the Voter ID cards. (*Id.* ¶ 11.)

Gwinnett County began issuing Voter ID cards on Friday, June 30, 2006. (L. Ledford Second Decl. ¶ 11.) As of July 7, 2006, Gwinnett County had issued a total of three cards. (*Id.*) Ms. Ledford states that her office has the capacity to make an unlimited number of temporary Voter ID cards, which are valid for forty-five days. (*Id.*)

Ms. Ledford also states that her office has received no complaints indicating that voters cannot obtain a Photo ID. (L. Ledford Second Decl. ¶ 13.) Ms. Ledford's office has received only a few telephone calls concerning Voter ID cards, and most of those calls have come from voters who have driver's licenses but think they also need a Voter ID card. (*Id.*) When Ms. Ledford's employees receive such calls, they ask whether the caller has another form of Photo ID. (*Id.*) If the caller has another acceptable form of Photo ID, Ms. Ledford's employees advise the caller to use that ID. (*Id.*) If the caller does not have an acceptable form of Photo ID, Ms. Ledford's employees give the caller information concerning how to obtain a Voter ID card. (*Id.*) Ms. Ledford's employees also advise the callers concerning the availability of no-excuse absentee voting by mail that does not require a Photo ID. (*Id.*) Ms. Ledford's office answers the calls by explaining the new law, not the old law. (*Id.* ¶ 14.) Based on the minimal number of calls that her office has received, the fact that the majority of the callers already have an acceptable form of Photo ID, and her experience in Gwinnett County, Ms. Ledford believes that the equipment and personnel that her office has is more than sufficient to fulfill any requests for the Voter ID cards. (*Id.* ¶ 15.)

According to Ms. Ledford, using signature comparison to identify voters at the polls is not reasonable or feasible at the present time. (L. Ledford Second Decl. ¶ 16.) No such mechanism currently is in place, and implementing one would be very costly and would result in a time-consuming process that would create long lines at the polls. (*Id.*) According to Ms. Ledford, such a process: (1) depends on the computer system working without fail and on poll workers having good computer skills; (2) assumes the quality of the reproduction is good; and (3) is very time-consuming. (*Id.*) Although Ms. Ledford's office does signature comparison for absentee ballots, absentee ballots require fewer comparisons, two original signatures are available for comparison, and the registrar's office can compare signatures as the absentee ballots are received. (*Id.*)

Gwinnett County receives absentee ballot applications on a regular basis, and Ms. Ledford has not noted problems with voters being unable to complete the applications correctly. (L. Ledford Second Decl. ¶ 17.) In any event, a voter need not complete an application form to obtain an absentee ballot. (*Id.*) Any voter who requests an absentee ballot via a writing that contains enough information for Ms. Ledford's office to determine that the voter is a registered voter and to be able to mail the ballot receives an absentee ballot. (*Id.*)

Ms. Ledford further states that no automatic updating of the voter registration rolls occurs on a regular basis. (L. Ledford Second Decl. ¶ 18.) The State can delete deceased voters based on reports generated by the Vital Records Department, using file management; however, each county is responsible for updating its rolls on the statewide system. (*Id.*) The process for updating the rolls varies by county. (*Id.*)

Ms. Ledford opines that the 2006 Photo ID Act will not disenfranchise any voter, because voters who lack Photo ID can vote a provisional ballot and provide identification within two business days or vote via absentee ballot by mail. (L. Ledford Second Decl. ¶ 19.)

Finally, Ms. Ledford states that if the Court issues a preliminary injunction for the July 18, 2006, primaries, tremendous confusion for election officials, poll workers, and voters would result. (L. Ledford Second Decl. ¶ 20.)

12. Second Declaration of Gary Smith

Gary Smith is the Director of Elections and Registration for the Forsyth County Board of Elections in Cumming, Georgia, and has served in that position since January 1, 2002. (Second Decl. of Gary Smith ¶ 2.) In his capacity as Director of Elections, Mr. Smith supervises all Forsyth County elections, and serves as the official registrar of voters for municipalities in Forsyth County. (*Id.*)

After the 2006 Voter ID Act passed and the DOJ precleared it, Mr. Smith's office ordered new election materials from the Elections Division for use during the July 18, 2006, primary, including voter certificates and posters for the polling places that explain the six forms of acceptable Photo ID. (G. Smith Second Decl. ¶ 3.) Mr. Smith's staff also attended training sessions conducted by the Elections Division, including training concerning the 2006 Photo ID Act's requirements and the issuance of Voter ID cards. (*Id.* ¶ 3(a).) Mr. Smith's office conducted poll training under the 2006 Photo ID Act, and does not have sufficient time to conduct another poll worker training before the July 18, 2006, primary. (*Id.*)

Mr. Smith's office also has made efforts to educate the public concerning the Photo ID requirement. (G. Smith Second Decl. ¶ 3(b).) Mr. Smith's office sent a letter to every voter in the general election who did not show one of the acceptable forms of Photo ID. (*Id.* & Ex. 1.) The letter advised those voters of the change in the law and the need to obtain a proper Photo ID. (*Id.*) Mr. Smith's office also has met with Senior Center citizens, published articles in the local newspapers, placed mailings in water bills, and provided website information. (*Id.*) Mr. Smith's office has received very few calls concerning the Photo ID requirements, but has answered those calls by explaining the new law, rather than the old law. (*Id.* ¶ 3(c).)

In-person absentee voting began on June 5, 2006. (G. Smith Second Decl. ¶ 4.) Voters who used in-person absentee voting were required to present Photo ID, and all did so. (*Id.*) As of July 7, 2006, Forsyth County had 119 in-person absentee voters, none of whom lacked a Photo ID. (*Id.*)

As of July 7, 2006, Forsyth County had mailed out 414 absentee ballots, including 70 Democratic ballots and 344 Republican ballots. (G. Smith Second Decl. ¶ 5.) Forsyth County has received 19 Democratic ballots and 105 Republican ballots. (*Id.*)

Early voting was scheduled to begin on July 10, 2006. (G. Smith Second Decl. ¶ 6.) Late in the afternoon of July 7, 2006, Mr. Smith's office received notification that an injunction had been issued prohibiting the Photo ID requirement, and that his office should return to the old law. (*Id.*) Mr. Smith's office can make appropriate adjustments for advance voting this week because the voting is taking place at only three locations: the Public Safety complex and the two libraries. (*Id.* ¶ 7.) Mr. Smith's office does not have time to conduct a new training for poll workers. (*Id.*)

Mr. Smith's office understands that the State court's injunction is the subject of an emergency appeal. (G. Smith Second Decl. ¶ 8.) If the injunction is overturned or another change is made, it is very likely that some polling places may require a Photo ID for in-person voting, while other polling places will apply the old law. (*Id.*) The injunction or any change will result in tremendous confusion at the polls. (*Id.*)

Mr. Smith office is fully equipped with the machine, supplies, and personnel needed to issue the Voter ID cards, and his staff have received training concerning producing the cards. (G. Smith Second Decl. ¶ 8.) Mr. Smith's office has a set of equipment, including a camera, a computer, and a printer, to produce Voter ID cards. (*Id.*) As of July 7, 2006, Forsyth County had issued a total of three cards. (*Id.* ¶ 11.)

Mr. Smith also states that his office has received no complaints indicating that voters cannot obtain a Photo ID. (G. Smith Second Decl. ¶ 11.) Mr. Smith's office has received only a few telephone calls concerning Voter ID cards, and most of those calls have come from voters who have driver's licenses but think they also need a Voter ID card. (*Id.*)

According to Mr. Smith, using signature comparison to identify voters at the polls is not reasonable or feasible at the present time. (G. Smith Second Decl. ¶ 17.) No such mechanism currently is in place, and implementing one would be very costly and would result in a time-consuming process that would create long lines at the polls. (*Id.*) According to Mr. Smith, such a process: (1) depends on the computer system working without fail and on poll workers having good computer skills; (2) assumes the quality of the reproduction is good; and (3) is very time-consuming. (*Id.*) Although Mr. Smith's office does signature comparison for absentee ballots, absentee ballots require fewer comparisons, two original signatures are available for comparison, and the registrar's office can compare signatures as the absentee ballots are received. (*Id.*)

Forsyth County receives absentee ballot applications on a regular basis, and Mr. Smith has not noted problems with voters being unable to complete the applications correctly. (G. Smith Second Decl. ¶ 13.) In any event, a voter need not complete an application form to obtain an absentee ballot. (*Id.*) Any voter who requests an absentee ballot via a writing that contains sufficient information for Mr. Smith's office to determine that the voter is a registered voter and to be able to mail the ballot receives an absentee ballot. (*Id.*)

Mr. Smith further states that no automatic updating of the voter registration rolls occurs on a regular basis. (G. Smith Second Decl. ¶ 14.) Each county is responsible for maintaining its own list, including deleting deceased voters, voters who are no longer eligible to vote because they have moved, are serving a sentence for a felony, or have been adjudicated incompetent. (*Id.*) The process for updating the rolls varies by county. (*Id.*)

Mr. Smith opines that the 2006 Photo ID Act will benefit voters by preventing their votes from being diluted by invalid votes due to in-person voter fraud, which Mr. Smith believes can be accomplished easily. (G. Smith Second Decl. ¶¶ 15-16.) According to Mr. Smith, the 2006 Photo ID Act's provisions assist his office in preventing the opportunity for an invalid vote after a fraudulent registration. (*Id.* ¶ 18.) Mr. Smith states that he reported six fraudulent voter registrations to the Forsyth County District Attorney's Office last year. (*Id.*) According to Mr. Smith, only one other opportunity exists to prevent the fraudulent registrants from casting invalid ballots-prohibiting them from voting at the polling places when they do not have correct identification. (*Id.*)

Mr. Smith further opines that the 2006 Photo ID Act's requirements benefit voters and the public by promoting public confidence in elections. (G. Smith Second Decl. ¶ 19.) Mr. Smith believes that the limitation on the number of forms of acceptable identification is especially helpful to the poll workers in Forsyth County, all of whom are part-time employees and many of whom change from election to election. (*Id.* ¶ 20.) Mr. Smith opines that photo identification is necessary to identify voters in Forsyth County, which has a large population and is a mobile community, as the poll workers do not know many of the voters by sight. (*Id.* ¶ 21.)

Finally, Mr. Smith states that if the Court issues a preliminary injunction for the July 18, 2006, primaries, tremendous confusion for election officials, poll workers, and voters would result. (G. Smith Second Decl. ¶ 22.) In particular, Mr. Smith's office cannot conduct another poll worker training, which Mr. Smith believes would be essential because the poll workers already have received training under the 206 Photo ID Act. (*Id.*)

13. Second Declaration of Shea Hicks

Shea Hicks is the Chairperson of the Gordon County Board of Elections and Voter Registration (the "GBRE") and has served in that position since 2001. (Second Decl. of Shea Hicks ¶ 2.) In her capacity as Chairperson, Ms. Hicks supervises all Gordon County elections, as well as elections for municipalities in Gordon County, including Fairmount, Ranger, Resaca, and Plainville. (*Id.*) When requested, the GBRE also assists the City of Calhoun with its elections. (*Id.*)

After the 2006 Voter ID Act passed and the DOJ precleared it, Ms. Hick's office ordered new election materials from the Elections Division for use during the July 18, 2006, primary, including voter certificates and posters for the polling places that explain the six forms of acceptable Photo ID. (Shea Hicks Second Decl. ¶ 3.) Ms. Hicks' staff also attended training sessions conducted by the Elections Division, including training concerning the 2006 Photo ID Act's requirements and the issuance of Voter ID cards. (*Id.* ¶ 3(a).) Ms. Hicks' office conducted poll worker training under the 2006 Photo ID Act, and does not have sufficient time to conduct another poll worker training before the July 18, 2006, primary. (*Id.*)

Ms. Hicks' office also has made efforts to educate the public concerning the Photo ID requirement. (S. Hicks Second Decl. ¶ 3(b).) Ms. Hicks' office provided information to the newspaper, which published a story containing information about the 2006 Photo ID Act. (*Id.*) Ms. Hicks' office has received very few calls concerning the Photo ID requirements, but has answered those calls by explaining the new law, rather than the old law. (*Id.* ¶ 3(c).)

In-person absentee voting began on June 7, 2006. (S. Hicks Second Decl. ¶ 4.) Voters who used in-person absentee voting were required to present Photo ID, and all did so. (*Id.*) As of July 7, 2006, Gordon County had seventy-three in-person absentee voters, none of whom lacked a Photo ID. (*Id.*)

As of July 7, 2006, Gordon County had mailed out 210 absentee ballots, including 127 Democratic ballots and 83 Republican ballots. (S. Hicks Second Decl. ¶ 5.) Gordon County has received 82 Democratic ballots and 36 Republican ballots. (*Id.*)

Early voting was scheduled to begin on July 10, 2006. (S. Hicks Second Decl. ¶ 6.) Late in the afternoon of July 7, 2006, Ms. Hicks' office received notification that an injunction had been issued prohibiting the Photo ID requirement, and that her office should return to the old law. (*Id.*) Ms. Hicks' office can make appropriate adjustments for advance voting this week because the voting is taking place at only one location: Ms. Hicks' office. (*Id.* ¶ 7.) Ms. Hicks, however, will have to give notice to all of the poll workers who will be working at the polls on July 18, 2006. (*Id.*)

Ms. Hicks' office understands that the State court's injunction is the subject of an emergency appeal. (S. Hicks Second Decl. ¶ 8.) If the injunction is overturned or another change is made, it is very likely that some polling places may require a Photo ID for in-person voting, while other polling places will apply the old law. (*Id.*) The injunction or any change will result in tremendous confusion at the polls. (*Id.*)

Ms. Hicks' office is fully equipped with the machine, supplies, and personnel needed to issue the Voter ID cards, and her staff have received training concerning producing the cards. (S. Hicks Second Decl. ¶ 9.) Ms. Hicks' office has a set of equipment, including a camera, a computer, and a printer, to produce Voter ID cards. (*Id.*) Based on the extremely low demand for the Voter ID cards in Gordon County, Ms. Hicks does not anticipate needing additional equipment. (*Id.*) Ms. Hicks' office has supplies to make an unlimited number of temporary Voter ID cards. (*Id.*) As of July 7, 2006, Gordon County had not issued a Voter ID card. (*Id.* ¶ 11.)

Ms. Hicks also states that her office has received no complaints indicating that voters cannot obtain a Photo ID. (S. Hicks Second Decl. ¶ 11.) Ms. Hicks' office has received inquiries concerning Voter ID cards; however, those calls have come from voters who have driver's licenses but think they also need a Voter ID card. (*Id.*) The great majority of voters in Gordon County already use either a driver's license or a state-issued ID card to identify themselves at the polls. (*Id.*)

According to Ms. Hicks, using signature comparison to identify voters at the polls is not reasonable or feasible at the present time. (S. Hicks Second Decl. ¶ 12.) No such mechanism currently is in place, and implementing one would be very costly and would result in a time-consuming process that would create long lines at the polls. (*Id.*) According to Ms. Hicks, such a process: (1) depends on the computer system working without fail and on poll workers having good computer skills; (2) assumes the quality of the reproduction is good; and (3) is very time-consuming. (*Id.*) Although Ms. Hicks' office does signature comparison for absentee ballots, absentee ballots require fewer comparisons, two original signatures are available for comparison, and the registrar's office can compare signatures as the absentee ballots are received. (*Id.*)

Gordon County receives absentee ballot applications on a regular basis, and Ms. Hicks has not noted problems with voters being unable to complete the applications correctly. (S. Hicks Second Decl. ¶ 13.) In any event, a voter need not complete an application form to obtain an absentee ballot. (*Id.*) Any voter who requests an absentee ballot via a writing that contains sufficient information for Ms. Hicks' office to determine that the voter is a registered voter and to be able to mail the ballot receives an absentee ballot. (*Id.*)

Finally, Ms. Hicks states that if the Court issues a preliminary injunction for the July 18, 2006, primaries, tremendous confusion for election officials, poll workers, and voters would result. (S. Hicks Second Decl. ¶ 20.)

14. Depositions

a. Deposition of Kathy A. Rogers

Ms. Rogers is the Director of Elections for the Secretary of State's Office. (Dep. of Kathy A. Rogers at 3.) She has been employed with Secretary of State's Office since May 2002. (*Id.* at 4.)

According to Ms. Rogers, each county usually has one person as a full-time employee in the registrar's office. (K. Rogers Dep. at 8.) The registrar's office in a given county may have other part-time employees. (*Id.*) All of the registrars have offices in public buildings. (*Id.*) Some registrars have satellite offices for absentee voting periods, but most generally have one main office for the bulk of the year. (*Id.*) Registrar's offices are required to be open during regular business hours, which may vary from county to county. (*Id.* at 9.)

The Secretary of State's Office has provided information to elections and registration officials concerning the 2006 Photo ID Act and the passage of the 2006 Photo ID Act, its status, and its preclearance. (K. Rogers Dep. at 10.) The Secretary of State's Office discussed those matters at the Georgia Elections Officials Conference in early April 2006. (*Id.*) The Secretary of State's Office planned to give more specific detailed information to the registrars at the Georgia Voter's Registrar's Conference, scheduled to be held from May 22 through May 24, 2006. (*Id.* at 11.) Attendance at one of those events is mandatory for registrars. (*Id.*)

The new regulations from the State Election Board were in the mail to registrars as of May 8, 2006, the date of Ms. Rogers' deposition. (K. Rogers Dep. at 13.) Registrars who had signed up to receive electronic communications received the rules by e-mail during the preceding week. (*Id.*) A number of registrars are not signed up to use the electronic services. (*Id.*)

At the Voter Registrar's Conference, the vendor of the Voter ID card equipment was to send representatives to demonstrate the equipment to the registrars. (K. Rogers Dep. at 14, 64.) The vendor was to have responsibility for the training. (*Id.* at 18.) More than one attendee per county likely will come to the conference; however, each county decides which staff members to send to the conference. (*Id.* at 64.)

The 2006 Photo ID Act contemplates providing one piece of Voter ID equipment to a county, regardless of population size. (K. Rogers Dep.at 17, 61.) Ms. Rogers does not know whether any county plans to purchase other equipment by the July 18, 2006, primary election. (*Id.* at 17, 61.) The decision to purchase extra equipment would be made on a county-by-county basis. (*Id.* at 61-62.) The State will not provide funding to staff the equipment. (*Id.* at 17.)

The touch-screen voting change involved significantly more training and education, and the State provided significantly more funding. (K. Rogers Dep. at 18-20.) The State has anticipated funding the education effort for the 2006 Photo ID Act through funds provided to the State Election Board and through the office of the Secretary of State. (*Id.* at 20.) The Secretary of State's Office will provide material to local registrars for reproduction and distribution within counties. (*Id.*)

At present, the Secretary of State's Office has one statewide voter education coordinator and three regional voter education coordinators. (K. Rogers Dep. at 21.) In 2002, it had twelve regional voter education coordinators plus a statewide voter education coordinator. (*Id.*)

The Secretary of State's Office has no particular line item budget available for the education effort for the 2006 Photo ID Act; however, it does have a small budget available. (K. Rogers Dep. at 22.) The State did not provide additional funds to the Secretary of State's Office for the education effort. (*Id.* at 23.) The Secretary of State's Office anticipates working with the State Elections Board to assist it in determining the most effective manner to expend the $250,000 that the legislature provided to the State Election Board for voter education. (*Id.*)

In 2005, the State Election Board received no reports of fraud involving someone impersonating a voter for in-person voting. (K. Rogers Dep. at 24.) It received complaints concerning fraud in the absentee balloting process. (*Id.* at 24-26.) It also received complaints of fraudulent voter registrations. (*Id.* at 26.)

Individuals who register to vote by mail and who are voting for the first time must show identification to vote absentee. (K. Rogers Dep. at 27.) Such identification can consist of a utility bill or a bank statement. (*Id.*) Individuals who registered to vote in person do not have to present identification to vote absentee. (*Id.* at 30.)

To obtain a Voter ID card, a voter can present a utility bill issued within the last sixty days. (K. Rogers Dep. at 31.) The voter also can present a voter registration application, which the registrar should have in its records. (*Id.* at 33.) So long as a voter can show his or her date of birth, full legal name, and residence, all of which should be contained on the voter registration application, the voter would not need to show additional documentation to get a Voter ID card. (*Id.* at 34.)

A voter may present a paycheck from his or her employer to obtain a Voter ID card. (K. Rogers Dep. at 34-35.) A voter also can present census records or an early school record. (*Id.* at 35.) Additionally, voters can present a doctor's record of post-natal care or a copy of a State or Federal income tax return. (*Id.* at 40, 48-49.) A voter may present a bank statement or a landlord's receipt acknowledging receipt of rent for a room that shows the voter's name and address. (*Id.* at 51.) Essentially, a voter may show a combination of documents, but must establish his or her date of birth, legal name, and principal address. (*Id.*) A voter also must show that he or she is registered to vote; however, this information should be in the registrar's possession. (*Id.* at 36.)

Voters may use their voter precinct cards to get a Voter ID card. (K. Rogers Dep. at 41.) Those cards are mailed to the voters and are not in the registrar's possession. (*Id.* at 41, 43.) The registrars do not maintain copies of the cards, but instead simply maintain records showing that the cards were mailed and the dates of mailing. (*Id.* at 43.)

Voter registration applications remain on file with the registrar. (K. Rogers Dep. at 44.) The voter registration applications contain the signatures that the registrar is supposed to consult when verifying the accuracy of absentee ballots. (*Id.*)

A voter can use his or her voter registration application to get a Voter ID card, and a voter can register to vote without presenting identification. (K. Rogers Dep. at 51.) To obtain a Voter ID card, a voter must sign an application affirming that he is in fact the registered voter and that he does not have a Georgia driver's license or Georgia-issued State ID card. (*Id.* at 51-52.) If he does so, he can get a Voter ID card without showing photo ID. (*Id.*) He then can use the Voter ID card to vote in person. (*Id.* at 52.)

Ms. Rogers has no information from the vendor concerning the processing time required to produce a Voter ID card, but believes the time would be very brief. (K. Rogers Dep. at 56.) She does not know how many Voter ID cards a single machine can produce in one day. (*Id.* at 59.)

Individuals applying for a Voter ID card must complete a form. (K. Rogers Dep. at 57.) The number of staff in registrar's offices inputting forms varies. (*Id.*) During absentee voting, however, the offices generally have more staff. (*Id.* at 58.) The State is not providing more money for staffing to implement the 2006 Photo ID Act. (*Id.* at 58.)

The regulations allow a registrar's office to be open extra hours, so long as the registrar follows the statute requiring preclearance by the DOJ. (K. Rogers Dep. at 59.) The registrar's office are required to remain open a minimum of eight hours per day on Monday through Friday of the week prior to the election. (*Id.*) Otherwise, the offices are to be open during regular business hours. (*Id.*) Some offices maintain extended hours during the week or at satellite locations. (*Id.* at 60.)

b. Deposition of Cathy Cox

Secretary of State Cathy Cox testified that the November 2005 general elections did not require Photo ID. (Dep. of Cathy Cox Dated May 8, 2006, at 4.) Secretary of State Cox is not aware of any complaints of fraudulent in-person voting from those elections. (*Id.* at 5.) In fact, during her tenure as Secretary of State and Assistant Secretary of State, she has not received a complaint of in-person voter impersonation. (*Id.* at 43.) She believes that the system previously in place weeds out opportunities for voter fraud and has been effective so far. (*Id.* at 45-46.)

Secretary of State Cox is aware of complaints of fraudulent absentee voting relating to the November 2005 elections. (May 8, 2006, C. Cox Dep. at 5-6.)

Secretary of State Cox knows of no legislation introduced during the 2006 legislative session to address fraudulent voter registration. (May 8, 2006, C. Cox Dep. at 8-9.) The legislature made no attempts to prevent fraud in absentee voting during that session. (*Id.* at 12.)

The State Election Board waited until after the DOJ precleared the 2006 Photo ID Act on April 21, 2006, to adopt rules and regulations under the Act. (May 8, 2006, C. Cox Dep. at 14-15.) The State Election Board did not have authority to adopt rules and regulations under the 2006 Photo ID Act until the DOJ precleared it. (*Id.* at 15.)

The State Election Board proposed the rules and regulations for adoption on May 2, 2006, but because of notice and public hearing requirements, it could not adopt the rules and regulations until June 1, 2006, after a public hearing. (May 8, 2006, C. Cox Dep. at 13-14, 17.) Those rules and regulations also required DOJ preclearance. (*Id.* at 14, 17.)

The Secretary of State's Office requested money to purchase equipment for the Voter ID cards and to conduct voter education efforts. (May 8, 2006, C. Cox Dep. at 17.) The Secretary of State's Office informed the legislature of its 2002 efforts to educate voters concerning touch-screen voting. (*Id.* at 17-18.)

The budget proposed by the Secretary of State's Office contemplated purchasing one piece of equipment per county, regardless of population. (May 8, 2006, C. Cox Dep. at 19.) Some metropolitan counties asked whether they could purchase additional equipment. (*Id.*) The legislature eventually gave the Secretary of State's Office $550,000 for equipment. (*Id.* at 20.)

In 2002, the Secretary of State's Office had thirteen voter education coordinators. (May 8, 2006, C. Cox Dep. at 24.) Today, it has four, due to budget cuts. (*Id.*) The legislature did not give the Secretary of State's Office funding to hire additional education coordinators for the 2006 Photo ID Act voter education effort. (*Id.* at 25.) Instead, the legislature allocated $250,000 to the State Election Board for voter education and training. (*Id.*)

In her deposition, Secretary of State Cox could not explain the rationale for the theory that the Photo ID requirement prevents fraudulent in-person voting. (May 8, 2006, C. Cox Dep. at 29.) Secretary of State Cox also stated that she knew of no reason why a Photo ID should make a difference or prevent any fraud in the context of in-person voting. (*Id.* at 53.)

To register to vote, a voter need not present any of the identification required under the rules and regulations under the 2006 Photo ID Act to get a Voter ID card. (May 8, 2006, C. Cox Dep. at 30.) For absentee voting, a voter other than a first-time voter who registered by mail, does not have to present any form of identification set forth in the 2006 Photo ID Act and the accompanying rules and regulations. (*Id.*)

Secretary of State Cox does not know the exact number of people in Georgia who lack Photo IDs. (May 8, 2006, C. Cox Dep. at 31.) The AARP has estimated that approximately 300,000 senior citizens in Georgia do not have driver's licenses and may be impeded by the new statute. (*Id.*)

Secretary of State Cox does not recall that the legislature considered the literacy level of the Georgia population when it considered the changes to the absentee voting rules and the Photo ID requirement. (May 8, 2006, C. Cox Dep. at 37.) To vote absentee successfully, a voter must be able to read instructions, sign in the appropriate places, fold the ballot, put the ballot in the correct envelope, and make the right type of attestations to have the ballot accepted. (*Id.* at 38.) The instructions are fairly detailed and require a number of steps to complete the ballot, to mail the ballot to the registrar, and to time the mailing of the ballot so that the registrar receives it by the deadline. (*Id.*) Over 311,000 Georgians have less than a ninth-grade education level of reading, and whether those individuals could vote absentee would depend on whether they had done so previously. (*Id.* at 39.) Secretary of State Cox does not know whether a voter who cannot read above level 1 could vote absentee successfully. (*Id.*)

An analysis indicates that more Republican absentee ballots than Democratic absentee ballots are voted during primaries. (May 8, 2006, C. Cox Dep. at 40.) Secretary of State Cox contends that eliminating the absentee ballot requirements opens the floodgates to absentee voting fraud. (*Id.* at 44-45.)

The primary means of verification for absentee voting is to compare the signature on the envelope of the ballot to the signature on file in the registrar's office from the original voter registration. (May 8, 2006, C. Cox Dep. at 47.) Under the previous law, in-person voters who did not have identification completed an oath similar to the oath for an absentee ballot envelope. (*Id.* at 48.) Registrars certainly could compare signatures to verify identification for in-person voting; however, doing so would be very difficult because the voter registration cards are not at the polling places. (*Id.*) Ideally, the voter registration cards should stay in the registrars' offices. (*Id.* at 49.)

Secretary of State Cox testified that the 2006 Photo ID Act is subject to the same criticisms as the 2005 Photo ID Act. (May 8, 2006, C. Cox Dep. at 51.) Although Photo ID presumably will be available in more locations, it still will be difficult for the elderly, poor, sick, and those without automobiles or driver's licenses to obtain one. (*Id.*) The new Photo ID requirement will pose a hardship for many voters, particularly those in remote areas. (*Id.* at 52.) Even if a place for obtaining a Photo ID is in the voter's county, obtaining one will be difficult if the voter has no transportation. (*Id.* at 53.)

15. Declaration of Thomas Blake Ussery

Thomas Blake Ussery is a Redistricting Services Specialist in the Office of Legislative and Congressional Reapportionment. (Decl. of Thomas Blake Ussery ¶ 2.) That office provides technical support for redistricting actions by the General Assembly, and, upon a request by the Legislature, also provides technical assistance for local government redistricting plans. (*Id.*) Since 2001, Mr. Ussery has provided assistance to legislators in drawing maps for redistricting plans. (*Id.*)

Mr. Ussery's office uses Maptitude, a redistricting software. (T. Ussery Decl. ¶ 3.) When doing redistricting work, Mr. Ussery often must locate particular addresses on a map of the State or on a map of a particular jurisdiction within the State. (*Id.*) Mr. Ussery uses the Maptitude software to geocode the location of the addresses. (*Id.*) Specifically, he enters the address, and Maptitude uses a database of streets with numbered ranges of addresses to pinpoint the specific location of a physical address or a location within a certain address range. (*Id.*) Maptitude then makes a geographic representation of the location with a star or other symbol. (*Id.*)

Mr. Ussery used Maptitude to create the map attached as Exhibit 1 to his Declaration. (T. Ussery Decl. ¶ 4.) The map reflects the addresses of DDS service centers, as well as the locations of the Georgia registrar's offices. (*Id.* ¶¶ 5-7.) According to Mr. Ussery, the map indicates that in Fulton and Dekalb counties, voters have seven locations in which they can obtain Photo ID cards for voting: three DDS service centers in Fulton County, two DDS service centers in Dekalb County, and one registrar's office in each county. (*Id.* ¶ 7.)

16. Declaration of Claud L. McIver III

Claud L. McIver is the Vice-Chair of the Georgia State Board of Elections, and has been a member of the State Election Board since July 2005. (Decl. of Claud L. McIver III ¶ 2.) Mr. McIver supported the 2006 Photo ID Act. (*Id.* ¶ 3.) The Georgia General Assembly passed the 2006 Photo ID Act during its 2006 Regular Session. (*Id.* ¶ 4.) The General Assembly appropriated $800,000 to the State Election Board to provide for: (a) the installation of the equipment to allow every county voter registrar's office to produce a Voter ID card; (b) the training for the registrars to operate the equipment; and (c) voter education. (*Id.*) Mr. McIver states that the State Election Board has carried out those functions, and continues to do so. (*Id.*) According to Mr. McIver, the amount appropriated by the General Assembly is sufficient to accomplish those functions. (*Id.*)

After the 2006 Photo ID law was passed and the DOJ precleared it, the State Election Board appointed Mr. McIver to oversee the tasks necessary to ensure that the counties received the machinery, supplies, training, and support to produce and distribute the Voter ID cards. (C. McIver Decl. ¶ 5.) To provide the counties with the necessary equipment, forms, supplies, and training to produce the Voter ID cards, the State Election Board approved a vendor to provide the equipment, supplies, training, and support to the counties, and purchased those items and services from the vendor. (*Id.* ¶ 5(a).) The equipment is installed and is operational in every county registrar's office. (*Id.*) As of July 6, 2006, the registrar's offices in Georgia had issued a total of eighty-three Voter ID cards. (*Id.*)

The contract with the vendor provides that the vendor must allow the State Election Board and all counties to purchase additional machines at the same price charges for the first unit, or for approximately $3,500 each. (C. McIver Decl. ¶ 5(a).) Several of Georgia's large counties have ordered additional units. (*Id.*)

The State Election Board also approved a form for applicants to complete to obtain a Voter ID card. (C. McIver Decl. ¶ 5(b).) Every registrar's office in Georgia has a supply of the forms. (*Id.*)

The State Election Board also has completed the training of the registrars by holding a mass training session at the Voter Registrars Association of Georgia's meeting on May 22 through May 24, 2006. (C. McIver Decl. ¶ 5(c).) Representatives from 157 of Georgia's 159 counties attended that meeting. (*Id.*) Many counties also received on-site training from the vendor. (*Id.*) The State Election Board also purchased two additional Voter ID machines to conduct additional training at the Secretary of State's Office and to serve as loaners if necessary. (*Id.*)

The 2006 Photo ID Act also required the State Election Board to adopt procedures for the application and issuance of the cards. (C. McIver Decl. ¶ 7.) The State Election Board accordingly adopted rules, which it submitted to the DOJ for preclearance. (*Id.* & Ex. 1.) In adopting rules and in determining the type of documentation necessary to obtain a Voter ID card, the State Election Board considered the types of identifying documents that voters might have readily available and that registrars could identify easily. (*Id.* ¶ 8.)

Mr. McIver states that the registrars all have knowledge of the documents that voters may present to obtain a Voter ID card, and that the registrars can and have provided that information to voters by telephone. (C. McIver Decl. ¶ 9(a).) Mr. McIver further notes that all registrars are producing the Voter ID cards at their offices, and that some larger counties are making the Voter ID card available at satellite locations as well. (*Id.* ¶ 9(b).) Additionally, according to Mr. McIver, some counties plan to use a mobile unit to produce Voter ID cards. (*Id.*) Mr. McIver stated that no fees are necessary to obtain a Voter ID card, and indicates that all voters who are eligible for a Voter ID card can use copies of documents that do not cost the voters anything and that are readily available to the voters, such as a Medicare statement or a Social Security statement, to obtain the Voter ID card. (*Id.* ¶ 9(c).) Mr. McIver observes that the counties can issue replacement voter registration cards to voters who have lost those cards, but notes that a voter does not need a voter registration card to obtain a Voter ID card. (*Id.* ¶ 9(d).)

The State Election Board met on June 29, 2006, after the DOJ precleared the rules on June 27, 2006. (C. McIver Decl. ¶ 10.) At the June 29, 2006, meeting, the State Election Board instructed the Elections Division of the Secretary of State's Office to notify registrars to begin issuing Voter ID cards immediately. (*Id.*) On that same day, the Elections

Division notified the registrars, and the registrars began issuing Voter ID cards on June 30, 2006. (*Id.*)

During the June 29, 2006, meeting, the State Election Board approved a voter education piece listing the acceptable forms of identification, explaining where and how to obtain a Voter ID card or a State ID card, and stating that voters may vote an absentee ballot without providing Photo ID. (C. McIver Decl. ¶ 11 & Ex. 2.) The piece will be handed out during the absentee voting period beginning on July 10, 2006, as well as at the polls on July 18, 2006. (*Id.*) For larger counties, the State Election Board printed and distributed the education piece, and directed the counties to distribute the piece during advance voting and at the polls on July 18, 2006. (*Id.* ¶ 12.) For smaller counties, the State Election Board provided the template for the piece, supplied paper, and instructed the counties to print the piece for distribution during early voting and on primary election day. (*Id.*) According to Mr. McIver, the piece is designed for the voters whom Plaintiffs allege will appear at the polls in large numbers without a Photo ID. (*Id.* ¶ 13.) Mr. McIver points out that voters who lack a Photo ID may vote in-person using a provisional ballot, and that those voters may have their votes counted if they can provide necessary documentation within forty-eight hours. (*Id.*) The State Election Board also plans to mail the piece to organizations such as the AARP, the NAACP, and the League of Women Voters, to allow those organizations to distribute the letter to the public. (*Id.* ¶ 14.)

Mr. McIver notes that the list prepared by the Secretary of State's Office concerning the number of registered voters who lack driver's licenses or State ID cards issued by the DDS is flawed and unreliable.

(C. McIver Decl. ¶ 15 & n.1.) The State Election Board, however, will make the list of names and addresses available, without an Open Records Act request and without charge, to any person making a request for the list. (*Id.*) Groups interested in voter education efforts can obtain the list and the education piece to educate the voters. (*Id.*)

According to Mr. McIver, even if a voter needs to obtain a Voter ID card, there is no support for a theory that registrars will be too busy with no-excuse absentee voting to issue Voter ID cards. (C. McIver Decl. ¶ 16.) Even though Plaintiffs and other voter rights groups complain about the State Election Board's education efforts, to Mr. McIver's knowledge, none of the organizations that are Plaintiffs in this litigation have engaged in voter education efforts concerning the Photo ID requirement. (*Id.* ¶ 17.)

Mr. McIver states that the State Election Board has engaged in other voter education efforts, including television and radio public service announcements that either are airing currently or that will air this week. (C. McIver Decl. ¶ 18.) According to Mr. McIver, those announcements provide information about the need to bring Photo ID to the polls, the types of acceptable Photo ID, the process for obtaining a Voter ID card, and the availability of no-excuse absentee voting without a Photo ID card. (*Id.*) The radio ads began airing on Friday, July 7, 2006, on over 100 stations, airing three times a day. (*Id.* ¶ 19 & Ex. 3.) The ads are scheduled to run three times a day. (*Id.*) The television ads began airing on Wednesday, July 5, 2006, on the 150 Georgia affiliates of Northland Cable. (*Id.* ¶ 20.) The Georgia Association of Broadcasters also distributed the television ads to all of its affiliates, which include all Georgia television stations. (*Id.* ¶ 21.) Those ads began to run on or before July 7, 2006. (*Id.*)

Mr. McIver has appeared for interviews concerning voter education that aired on several television and radio stations during prime time. (C. McIver Decl. ¶ 22.) On Tuesday, July 11, 2006, Mr. McIver will appear on a thirty-minute radio show titled "Georgia Focus," and the show will air on fifty-eight radio stations listed on Exhibit 4 to Mr. McIver's affidavit. (*Id.*)

The State Election Board also has begun work on a brochure to send to voters, with a target distribution date of September 1, 2006. (C. McIver Decl. ¶ 23.) The brochure will tell voters about the need to bring Photo ID to the polls, the types of acceptable Photo ID, the process for obtaining a free Voter ID card, and the availability of no-excuse absentee ballots without a Photo ID. (*Id.*)

Mr. McIver notes that the State has an unlimited supply of temporary Voter ID cards, which the registrars will issue to voters "on the spot." (C. McIver Decl. ¶ 24.) Those temporary cards are good for forty-five days, allowing time for voters to vote in elections while waiting to receive the permanent Voter ID card. (*Id.*) The demand for the cards has been extremely low. (*Id.*) Further, the State Election Board can obtain funding to purchase more than 10,000 Voter ID cards if necessary. (*Id.*)

17. Second Declaration of Cathy Cox

In her position as Secretary of State, Cathy Cox serves as the Chair of the State Election Board. (Second Decl. of Cathy Cox ¶ 2.) Secretary of State Cox does not know how many registered voters in Georgia lack an acceptable Photo ID. (*Id.* ¶ 3.)

Although Secretary of State Cox used information from the AARP and the League of Women Voters estimating the number of such voters, Secretary of State Cox did not personally verify that 152,000 registered voters in Georgia lacked a Photo ID necessary for in-person voting. (*Id.*)

Secretary of State Cox's office requested that the DDS conduct a database comparison between their database of individuals with driver's licenses or DDS-issued Photo ID cards and a database of registered voters that the Secretary of State's Office supplied to DDS. (C. Cox Second Decl. ¶ 4.) The database of registered voters that the Secretary of State's Office supplied to DDS was a compilation of the voter rolls that the Secretary of State's Office had on file for Georgia's 159 counties. (*Id.*) The individual rolls are, in large part, maintained by each individual county, even though the Secretary of State's Office has concurrent power to remove deceased voters from the registration lists. (*Id.*) Some counties do a very good job of keeping their lists current, while others do not. (*Id.*)

Secretary of State Cox has no personal knowledge concerning the performance of the database comparison, did not participate in making the arrangements for the comparison, and was not involved in the communications between her office and DDS concerning the comparison. (C. Cox Second Decl. ¶ 5.) Although DDS sent "matched files" to the Secretary of State's Office, and the Secretary of State's Office used those files to create a list of individuals who apparently were not matches in the comparison, Secretary of State Cox does not know what constituted a "match" or what constituted a "no match." (*Id.* ¶ 6.)

After the Secretary of State's Office received the information and created its "no match" list, it broke that list down by county of residence and by race and sex, if available. (C. Cox Second Decl. ¶ 7.) The Secretary of State's Office and the DDS did not do an analysis or breakdown of economic status. (*Id.*)

Other than the database comparison with DDS, the Secretary of State's Office did not request another database comparison to determine whether people on the list of registered voters might have another acceptable form of Photo ID for voting. (C. Cox Second Decl. ¶ 8.)

Secretary of State Cox's idea of the scenario for in-person voter fraud is as follows: "A voter appears at the polls and votes as 'John Smith.' Subsequently, the actual John Smith appears, attempts to vote as himself and cannot." (C. Cox Second Decl. ¶ 9.) The Secretary of State's Office has not had a report of an attempt of that type of fraud in the past nine years; however, Secretary of State Cox does not dispute that under the previous law, it was possible for either that scenario or other forms of in-person voter fraud to occur. (*Id.*) Additionally, other issues related to in-person voter fraud may arise of which Secretary of State Cox and her staff are not made aware. (*Id.* ¶ 10.) Local election officials are in the best position to know of such issues. (*Id.*)

According to Secretary of State Cox, it currently is not possible to identify voters using a signature comparison at the polls. (C. Cox Second Decl. ¶ 11.) Although the State uses that procedure for mail-in absentee ballots, the procedure is not feasible for in-person voting because the mail-in absentee ballots involve far fewer voters and because the documentation needed to make the comparison is in the registrar's offices, not at the polls. (*Id.*) To conduct signature verifications at the polls, the State would need to scan in all of the signatures on file and provide each polling place with the hardware and software necessary to make the comparison. (*Id.*) This process would be expensive, and the State lacks the capability and funding for such a process at this time. (*Id.*)

Secretary of State Cox is personally opposed to the Photo ID requirements of the 2005 Photo ID Act and the 2006 Photo ID Act. (C. Cox Second Decl. ¶ 12.) Secretary of State Cox understood that when the 2006 Photo ID Act passed the General Assembly and was precleared by the DOJ, it was her duty and oath to uphold it. (*Id.*)

After the 2006 Photo ID Act was passed and precleared by the DOJ, the State Election Board took action to implement it, including making arrangements to obtain the machinery, supplies, and training to produce the Voter ID cards and passing rules to provide direction to voters and local election officials concerning the issuance of the cards. (C. Cox Second Decl. ¶ 13.) After the DOJ precleared the rules, the State Election Board directed local election officials to begin issuing the Voter ID cards. (*Id.*) Local election officials have begun issuing the Voter ID cards. (*Id.*)

The Elections Division also has conducted training and distributed the necessary supplies to carry out the 2006 Photo ID Act's provision in the July 18, 2006, primary election and later elections. (C. Cox Second Decl. ¶ 14.) The State Election Board also provided public information concerning the 2006 Photo ID Act's requirements on the Secretary of State's website and through other public information efforts. (*Id.*) The State Election Board also has approved written education material for distribution to voters, and has begun a series of radio public service announcements. (*Id.*)

18. Declarations of Voters Listed on the Data Match List

Defendants presented a number of declarations from Georgia voters whose names and addresses appear on the data match list, although the voters possess driver's licenses issued by DDS. (Decl. of Jeff E. Mullis ¶¶ 2-5; Decl. of Alisa Heiman Aczel ¶¶ 2-5; Decl. of Virginia Balfour ¶¶ 2-5; Decl. of Meredith Lynn Blackburn ¶¶ 2-5; Decl. of Shiriki Lean Cavitt ¶¶ 2-5; Decl. of Cynthia Hinrichs Clanton ¶¶ 2-5; Decl. of Ruby J. Kajumba ¶¶ 2-5; Decl. of Jeff E. Mullis ¶¶ 2-5; Decl. of Mary J. McCauley ¶¶ 2-5; Decl. of Jeffrey W. Mueller ¶¶ 2-5; Decl. of Shereen M. Walls ¶¶ 2-5; Decl. of Stefan Passantino ¶¶ 2-5; Decl. of Oscar N. Persons ¶¶ 2-5; Decl. of Joel M. Rainer ¶¶ 2-5; Decl. of Joan M. Ransom ¶¶ 2-5; Decl. of Hank Richardson ¶¶ 2-5; Decl. of Dewitt R. Rogers ¶¶ 2-5.)

19. The July 12, 2006, Hearing

On July 12, 2006, the Court held a hearing to address Plaintiffs' Second Motion for Preliminary Injunction. During that hearing, the Court heard testimony from witnesses, as well as arguments from the parties. Secretary of State Cox and Mr. McIver gave testimony during the July 12, 2006, hearing.

a. Testimony of Cathy Cox

Secretary of State Cox testified at the Court's October 12, 2005, hearing concerning the 2005 Photo ID Act. Since her October 12, 2005, testimony, Secretary of State Cox's office and the State Election

Board have received no formal or informal complaints of in-person voter fraud. (July 12, 2006, Hr'g Tr.) Because Secretary of State Cox and her staff are not physically present at every precinct in Georgia for election days, Secretary of State Cox and her office may not know of all instances of in-person voter fraud that may have occurred. (*Id.*)

Secretary of State Cox's office and the State Election Board, however, have received complaints of fraud in absentee voting. (July 12, 2006, Hr'g Tr.) A number of those complaints have involved irregularities in collecting and returning absentee ballots, in which someone who was not authorized to collect or mail the absentee ballots did so for another voter. (*Id.*)

The Georgia legislature has not proposed legislation to modify the requirements for registering to vote in Georgia. (July 12, 2006, Hr'g Tr.) The Federal Help America Vote Act ("HAVA") requests that individuals provide certain types of identification when registering to vote; however, HAVA does not require that the individuals present such identification. (*Id.*)

On June 19, 2006, Secretary of State Cox's office issued a press release indicating that over 600,000 voters lack a valid Georgia driver's license or a Photo ID card issued by DDS. (July 12, 2006, Hr'g Tr.; Pls.' Ex. 5.) Secretary of State Cox's office obtained that information from a data match that Secretary of State Cox authorized. (July 12, 2006, Hr'g Tr.) To conduct the data match, Secretary of State Cox's office provided DDS with a list of registered voters that Secretary of State Cox's office maintained. (*Id.*) DDS then compared the list of registered voters to its database of individuals who had valid Georgia driver's licenses and Photo ID cards issued by DDS. (*Id.*) DDS returned a list of over 600,000 individuals who appeared on the voter registration list and who lacked valid Georgia driver's licenses or DDS-issued Photo ID cards. (*Id.*) The list intended to match individuals by last name, date of birth, and social security number. (*Id.*) Individuals whose social security numbers were not in the database appeared on the list as not having a valid Georgia driver's license or DDS-issued Photo ID card. (*Id.*)

According to Secretary of State Cox, in ordering the data match, her office was not intending to inflate the numbers of voters who purportedly lacked a Georgia driver's license or Photo ID card. (July 12, 2006, Hr'g Tr.) Rather, her office was attempting to identify the smallest number of voters possible who lacked a Photo ID so that her office could do a direct mailing to advise those voters of the 2006 Photo ID Act's requirements. (*Id.*)

On June 23, 2006, Secretary of State Cox's office issued another press release stating that the voters who purportedly lacked a Photo ID were disproportionately elderly or minority voters. (July 12, 2006, Hr'g Tr.; Pls.' Ex. 6.) The numbers used for that press release came from the data match that Secretary of State Cox's office ordered. (July 12, 2006, Hr'g Tr.)

Secretary of State Cox testified that she was not aware of other data available to her office or to the State that would provide more accurate information concerning the number of voters who lacked a Photo ID. (July 12, 2006, Hr'g Tr.) Secretary of State Cox's office and the local registrars attempt to update the voter registration list to keep the list free of improper registration. (*Id.*) To Secretary of State Cox's best knowledge, those procedures are consistently followed; however, Secretary of State Cox cannot vouch for what every individual county does. (*Id.*) Secretary of State Cox's office is authorized to remove only deceased voters from the voter registration list, and cannot remove voters who are otherwise ineligible to vote. (*Id.*) Secretary of State Cox's office also relies on the counties to add voters who have newly registered to vote, and has no authority to add newly registered voters. (*Id.*)

Secretary of State Cox testified that she has learned of a "few dozen" inaccuracies in the data match list of voters. (July 12, 2006, Hr'g Tr.) According to Secretary of State Cox, those inaccuracies do not have a material effect on the accuracy of the data match list. (*Id.*) Secretary of State Cox, however, has no personal knowledge of the data match list's accuracy. (*Id.*)

Secretary of State Cox does not know how many Georgia voters lack any acceptable form of Photo ID under the 2006 Photo ID Act. (July 12, 2006, Hr'g Tr.) Her office did not match its list of registered voters to federal government databases, to databases of other state government agencies that issue identification cards, or to tribal identification lists. (*Id.*)

The State Election Board has promulgated rules and regulations to enforce the 2006 Photo ID Act. (July 12, 2006, Hr'g Tr.; Pls.' Ex. 7.) To Secretary of State Cox's knowledge, no copies of those rules and regulations have been mailed to any registered voters. (July 12, 2006, Hr'g Tr.) Secretary of State Cox testified that her office would mail copies of the rules and regulations to voters who requested copies. (*Id.*) Secretary of State Cox's office has shared the rules and regulations with the county registrars. (*Id.*) Secretary of State Cox's office also has posted the rules and regulation on its website. (*Id.*)

Before the State Election Board adopted the rules and regulations, it posted those rules and regulations for comment. (July 12, 2006, Hr'g Tr.) Secretary of State Cox testified that the State Election Board posted the proposed rules and regulations on its website and on the doors of the State election office in Atlanta, Georgia. (*Id.*)

The State Election Board drafted a letter to give to voters during the July 18, 2006, primary election that describes the requirements of the 2006 Photo ID Act and explains where to obtain a Voter ID card. (July 12, 2006, Hr'g Tr.) Absent an injunction against the 2006 Photo ID Act, if a voter appears at the polls and does not have an acceptable Photo ID, the voter will be informed that he or she can vote a provisional ballot and return within forty-eight hours with a proper Photo ID. (*Id.*) If the voter does not return with a proper Photo ID within forty-eight hours, his or her vote will not be counted. (*Id.*)

Under the State Election Board's rules and regulations, a voter may present his or her voter registration application as a form of identification in order to obtain a Voter ID card. (July 12, 2006, Hr'g Tr.) To register to vote, an individual need not provide a social security number, and is not required to provide any other identifying documentation, including a Photo ID. (*Id.*) A voter thus could register to vote, provide his or her voter registration application to the registrar, and, once his or her voter registration application is accepted, obtain a Voter ID card, all without showing any other form of identifying information. (*Id.*) In theory, a voter who registered fraudulently several years ago now may use his or her fraudulent voter registration application to obtain a Voter ID card, which he or she may use to vote in person. (*Id.*)

Secretary of State Cox testified that the process of obtaining a Voter ID card is an additional step that an individual must go through to vote in person. (July 12, 2006, Hr'g Tr.) To that extent, the Voter ID card process could serve as a deterrent to fraud. (*Id.*)

Voters who vote in-person are required to sign a voter certificate certifying that the information provided on the certificate is true. (July 12, 2006, Hr'g Tr.; Pls.' Ex. 9.) Making a false statement on the certificate is a felony. (July 12, 2006, Hr'g Tr.)

Voters who wish to apply for an absentee ballot need not complete a particular form. (July 12, 2006, Hr'g Tr.) A voter who desires an absentee ballot need only send a letter to his or her county registrar stating that the voter wants an absentee ballot and providing the voter's name and address. (*Id.*) If the voter cannot complete such a letter himself, he may get assistance from someone else. (*Id.*) Similarly, a voter may get assistance from someone else when completing an absentee ballot and placing it in the required inner and outer envelopes. (*Id.*)

Voting absentee by mail is an easier process under the current law. (July 12, 2006, Hr'g Tr.) Some campaign organizations, including Secretary of State Cox's own campaign organization, have mailed absentee ballot applications to voters, stating that the absentee voting by mail process is easy. (*Id.;* Defs.' Ex. 1.)

According to Secretary of State Cox, if fifty percent of the voters in a Georgia election voted by absentee ballot, registrars would be required to spend a significant amount of time comparing the signatures on the ballots to the signatures on the voters' voter registration cards. (July 12, 2006, Hr'g Tr.) Secretary of State Cox, however, could not testify as to how much time would be required to complete that process. (*Id.*)

Georgia has continued to attempt to update its in-person voting process by moving to touch-screen voting machines and by purchasing new equipment. (July 12, 2006, Hr'g Tr.) Although Secretary of State Cox's office has discussed digitizing the signatures on voter education cards, that process is not part of the current effort to update the in-person voting process. (*Id.*)

b. Testimony of Claud L. ("Tex") McIver, III

Claud L. ("Tex") McIver, III, is an attorney who serves as vice-chair of the State Election Board. (July 12, 2006, Hr'g Tr.) Mr. McIver has served in that position since July 2005, and has taken an active role in advocating for the passage of the 2006 Photo ID Act. (*Id.*) According to Mr. McIver, he has worked to draft a statute that responded to the concerns expressed by the Court in its October 12, 2005, Order preliminarily enjoining the 2005 Photo ID Act. (*Id.*) His objectives were to focus on the cost of Photo ID cards and ease of access to obtain those cards. (*Id.*)

In his position as vice-chair of the State Election Board, Mr. McIver worked to implement the 2006 Photo ID Act. (July 12, 2006, Hr'g Tr.) His responsibilities included ensuring that the State purchased equipment to create Voter ID cards and to evaluate the operation of that equipment, as well as overseeing the installation of the equipment and related training. (*Id.*) The State has selected a vendor for the equipment, and the equipment has been installed in all of Georgia's 159 counties. (*Id.*)

Registrars received training concerning the Voter ID card equipment during the Georgia Registrars Convention held in May 2006. (July 12, 2006, Hr'g Tr.) Twenty to thirty counties also requested, and received, individual training from the vendor of the equipment. (*Id.*)

Counties have begun issuing Voter ID cards. (July 12, 2006, Hr'g Tr.) As of July 12, 2006, Georgia counties had issued a total of 420 Voter ID cards. (*Id.*) Ten Atlanta metropolitan area counties issued 109 of the cards, while counties outside the Atlanta metropolitan area issued the remaining cards. (*Id.*)

Counties issue a temporary Voter ID card to voters on the day that the voters appear to request the Voter ID card. (July 12, 2006, Hr'g Tr.) The temporary Voter ID cards are valid for forty-five days. (*Id.*) The vendor is responsible for mailing permanent Voter ID cards to the voters, and usually does so within three days after the voters request the cards. (*Id.*) The counties may issue an unlimited number of temporary Voter ID cards, and the counties have supplies of applications for the Voter ID cards. (*Id.*)

The State contracted with the vendor of the Voter ID card equipment for the vendor to provide 10,000 Voter ID cards. (July 12, 2006, Hr'g Tr.) The State's contract with the vendor, however, provides that the State may purchase additional Voter ID cards if necessary. (*Id.*)

The State Election Board published rules and regulations for issuing and obtaining Voter ID cards. (July 12, 2006, Hr'g Tr.) Those rules and regulations were subject to the usual rule-making process, including a public comment period. (*Id.*) The State Election Board published the rules and regulations more than thirty days prior to the meeting at which it adopted the rules and regulations. (*Id.*) According to Mr. McIver, the list of documentation that is acceptable for obtaining a Voter ID card was intended to be as inclusive as possible, so as not to restrict voters who wished to obtain Voter ID cards. (*Id.*)

The State Election Board's rules and regulations specify the hours that registrars' offices must remain open. (July 12, 2006, Hr'g Tr.; Pls.' Ex. 7.) The rules and regulations specifically require that the registrars' offices remain open from eight a.m. to five p.m. on the Monday through Friday during the week prior to an election. (July 12, 2006, Hr'g Tr.; Pls.' Ex. 7.) In some counties, the registrar's office is not open except as mandated by the State Election Board. (July 12, 2006, Hr'g Tr.) The State Election Board's rules and regulations do not require that the registrars' offices remain open during the forty-eight hours after an election. (*Id.*) Mr. McIver, however, believes that registrars' offices must remain open each business day during regular business hours. (*Id.*)

The State Election Board has made information concerning the process and requirements for obtaining Voter ID cards available to local registrars, and has placed that information on its website. (July 12, 2006, Hr'g Tr.) The State Election Board also has used television and radio paid public service announcements ("PPSAs") to inform voters of the Photo ID requirement and the process and locations for obtaining Voter ID cards. (*Id.*) The State Election Board also prepared a voter education letter to be distributed to voters during the July 18, 2006, primary. (*Id.*)

According to Mr. McIver, the State Election Board felt that giving a letter to voters on the day of the primary election would be effective in educating the voters. (July 12, 2006, Hr'g Tr.) The State Election Board has made that letter available to any organization that wishes to distribute the letter; however, Mr. McIver is not aware of any organization that has distributed the letter. (*Id.*)

The State Election Board received some comments concerning the content of the letter and its readability during the hearing in which the State Election Board approved the letter. (July 12, 2006, Hr'g Tr.) The State Election Board has not asked a literacy expert to review the letter to determine whether the average Georgia voter can read and understand the letter. (*Id.*)

The letter to be provided to voters at the polls does not contain a statement informing voters who vote provisional ballots that they must return with Photo ID within forty-eight hours to have their provisional ballots counted. (July 12, 2006, Hr'g Tr.) According to Mr. McIver, poll workers will give verbal instructions concerning the forty-eight hour requirement to voters who receive provisional ballots. (*Id.*)

The television PPSAs are thirty-second advertisements that have run on channels that are members of the Georgia Association of Broadcasters. (July 12, 2006, Hr'g Tr.) Since the State Election Board began running its PPSAs, the total number of Voter ID cards issued has increased with each day. (*Id.*)

The radio PPSAs have run on the Clear Channel network, which consists of 115 radio stations in Georgia. (July 12, 2006, Hr'g Tr.) The network has a total estimated listening population of 900,000, including individuals who reside in neighboring states. (*Id.*) Some of the radio PPSAs air very early on Saturday and Sunday mornings. (*Id.*) According to Mr. McIver, the State Election Board selected the best option that it had, other than buying very expensive spots. (*Id.*)

Mr. McIver is concerned that the data match list obtained by the Secretary of State is inaccurate. (July 12, 2006, Hr'g Tr.) In particular, Mr. McIver is concerned because the data match used only the DDS database, even though other databases were readily available. (*Id.*) According to Mr. McIver, the list is replete with errors, and lists many individuals who actually possess a Georgia driver's license. (*Id.*) Mr. McIver is especially concerned that the Secretary of State's Office may not have made a recent effort to purge the voter registration list of dead voters, although he has not conducted a statistical analysis to determine how many dead voters remain on the list. (*Id.*) The State Election Board and the legislature, however, made no other attempt to obtain a list of voters who lack an acceptable form of Photo ID. (*Id.*) After the Secretary of State's office obtained the data match list, the State did not have sufficient time to obtain another list prior to the primary elections. (*Id.*)

Mr. McIver believes that less than three thousand registered voters lack any acceptable form of Photo ID. (July 12, 2006, Hr'g Tr.) This opinion is Mr. McIver's personal opinion, based on the number of Photo IDs issued and the low number of Voter ID cards issued. (*Id.*) Mr. McIver is not an expert in the field of statistical analysis. (*Id.*)

Mr. McIver has not received reports that local elections officials are overwhelmed with voting duties and lack time to issue Voter ID cards. (July 12, 2006, Hr'g Tr.) Indeed, Mr. McIver testified that it takes less than one minute to input a Voter ID card application and to take the applicant's photograph. (*Id.*)

Voters who appear at the polls to vote in person and who lack an acceptable form of Photo ID may vote a provisional ballot. (July 12, 2006, Hr'g Tr.) The voters then will have forty-eight hours to return with an acceptable Photo ID to have their votes counted. (*Id.*)

According to Mr. McIver, the State Election Board has not received complaints of absentee voter fraud involving a voter casting an imposter absentee ballot during Mr. McIver's tenure on the Board. (July 12, 2006, Hr'g Tr.) Instead, the majority of the complaints received by the State Election Board have involved improperly soliciting potential voters and improperly returning absentee ballots to registrars offices. (*Id.*)

The State Election Board has not received complaints indicating that the absentee ballot application is too difficult to understand. (July 12, 2006, Hr'g Tr.) Many candidates for office regularly send out absentee ballot applications. (*Id.*)

III. Discussion

A. Standard for Obtaining a Preliminary Injunction

To obtain a preliminary injunction, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the preliminary injunction is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. *McDonald's Corp. v.*

Robertson, 147 F.3d 1301, 1306 (11th Cir.1998). In the Eleventh Circuit, " '[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to the four requisites." *Id.* (quoting *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc.,* 887 F.2d 1535, 1537 (11th Cir.1989)) (internal quotation marks omitted) (alterations in original).

A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. " '[P]reliminary injunctions of legislative enactments-because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits-must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.' " *Bankwest, Inc. v. Baker,* 324 F.Supp.2d 1333, 1343 (N.D.Ga.2004) (quoting *Ne. Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville,* 896 F.2d 1283, 1285 (11th Cir.1990)).

B. Substantial Likelihood of Success on the Merits

1. Equal Protection Claim: Undue Burden

The Supreme Court has made it clear that voting is a fundamental right, *Burdick v. Takushi,* 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), under the Fourteenth Amendment in the context of equal protection, *Kramer v. Union Free Sch. Dist. No. 15,* 395 U.S. 621, 629, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969). Indeed, in *Wesberry v. Sanders,* 376 U.S.

1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), the Court observed:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

376 U.S. at 17-18, 84 S.Ct. 526. Similarly, in *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), the Court stated:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

377 U.S. at 561-62, 84 S.Ct. 1362.

"[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein,* 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). The equal right to vote, however, is not absolute. *Id.* Instead, states can impose voter qualifications and can regulate access to voting in other ways. *Id.* Under the United States

Constitution, states may establish the time, place, and manner of holding elections for Senators and Representatives. U.S. Const. art. I, § 4, cl. 1. Those qualifications and access regulations, however, cannot unduly burden or abridge the right to vote. *Tashjian v. Republican Party,* 479 U.S. 208, 217, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) ("[T]he power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote.") (citing *Wesberry,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481); *see also Dunn,* 405 U.S. at 359-60, 92 S.Ct. 995 (striking down Tennessee's durational residency voting requirement of one year in state and three months in county); *Beare v. Briscoe,* 498 F.2d 244, 247-48 (5th Cir.1974) (invalidating provisions of Texas Constitution and implementing statute requiring persons who wished to vote in any given year to register each year during registration period beginning on October 1 and ending on January 31 of following year) (per curiam). In particular, the Supreme Court has observed that wealth or the ability to pay a fee is not a valid qualification for voting. *Harper v. Va. State Bd. of Elections,* 383 U.S. 663, 666-68, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (citations omitted; footnote omitted).

A number of Supreme Court cases have set forth standards for determining whether a state statute or regulation concerning voting violates the Equal Protection clause. In *Dunn,* the Supreme Court stated that a court must examine: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn,* 405 U.S. at 335, 92 S.Ct. 995.

Another Supreme Court case indicates that the Court should " 'consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' " *Kramer,* 395 U.S. at 626, 89 S.Ct. 1886. Those cases apply strict scrutiny when examining state statutes or regulations that limit the right to vote. *Id.* at 627, 89 S.Ct. 1886 ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."); *see also Hill v. Stone,* 421 U.S. 289, 298, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975) ("in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification").

In a more recent line of cases, the Supreme Court has not necessarily applied the strict scrutiny test automatically to regulations that relate to voting. *Burdick,* 504 U.S. at 433-34, 112 S.Ct. 2059; *Tashjian,* 479 U.S. at 213, 107 S.Ct. 544 (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). Indeed, the Supreme Court observed in *Burdick:*

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote and his right to associate with others for political ends".

Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny."

Instead, ... a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law

> provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's most important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 433-34, 112 S.Ct. 2059 (citations omitted).

Defendants argue that the Photo ID requirement simply regulates the manner of voting, and that requiring a Photo ID for in-person voting is a reasonable means of achieving the legitimate state interest of regulating voting and preventing in-person voter fraud. Defendants also contend again that the Photo ID requirement is not a severe restriction on voting because, in reality, it prevents no one from voting. Instead, according to Defendants, anyone may vote by absentee ballot under the new, more relaxed, absentee voting requirements. Defendants previously have argued that even voters who register by mail may vote for the first time via absentee ballot without showing a Photo ID, and that such voters simply must include a utility bill, a bank statement, or other form of identification permitted by HAVA with their absentee ballots as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

Defendants observe that, at most, the Photo ID requirement prevents some individuals who wish to vote in person from doing so until they obtain proper identification. Defendants also point out that those individuals who lack a Photo ID may obtain one free of charge from a State DDS Office, the State's GLOW Bus, or from their county's registrar simply by appearing at those locations providing limited information.

Defendants also observe that although opportunities for voter fraud via absentee ballot or fraudulent voter registrations may exist, the legislature may address one method of voting at a time. In this case, the legislature has chosen to address voter fraud via in-person voting first.

The Court finds that the appropriate standard of review for evaluating the 2006 Photo ID Act is the *Burdick* sliding scale standard. Under that standard, the Court must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights," *Burdick,* 504 U.S. at 433-34, 112 S.Ct. 2059.

a. The Asserted Injury

For the reasons discussed below, the character and magnitude of the asserted injury to the right to vote is significant. Many voters who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a voter registrar's office or DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain Voter ID cards or Photo ID cards, or cannot travel to a registrar's office or a DDS service center during those locations' usual hours of operation because the voters do not have transportation available. The evidence in the record demonstrates that many voters who lack an acceptable Photo ID for in-person voting are elderly, infirm, or poor, and lack reliable transportation to a county registrar's office. For those voters, requiring them to obtain a Voter ID card in the short period of time before the July 18, 2006, primary elections and the corresponding primary run-off elections is unduly burdensome. Indeed, those voters likely cannot obtain a Photo ID or Voter ID card before the July 18, 2006, primary elections and the corresponding run-off elections, resulting in their inability to vote in those elections.

In any event, even if registrars' offices or DDS service centers have extended hours, those extended hours will be of little help to voters who must obtain a Photo ID before the July 18, 2006, primary elections and the corresponding primary run-off elections. The rules and regulations accompanying the 2006 Photo ID Act went into effect less than three weeks prior to the July 18, 2006, primary elections. Although the State has used PPSAs to notify or educate voters affected by the 2006 Photo ID Act about the availability of Voter ID cards at registrars' offices and the requirement to obtain a Photo ID prior to the July 18, 2006, primary elections, those PPSAs began running only two weeks before the July 18, 2006, primary elections. The radio PPSAs also run on a radio network with a relatively low total number of listeners, and many run at off-peak hours. It therefore is highly likely that a large number of Georgia voters who lack Photo IDs will not know of the 2006 Photo ID Act's requirements or the availability of a free Voter ID card until after the July 18, 2006, primary elections, and, perhaps, after the corresponding primary run-off elections.

Although the State Election Board has developed a letter for voters that explains the 2006 Photo ID

Act and the availability of Voter ID cards, the State Election Board made no arrangements to distribute that letter to voters who lacked Photo ID prior to the July 18, 2006, primary elections. Instead, the State Election Board plans to distribute the letter *when the voters appear to vote in person* during the July 18, 2006, primary elections or during the related advance voting. That method, however, is not reasonably calculated to reach the voters who are most likely to lack a Photo ID, many of whom may not appear at the polls or the registrar's office during those times. Further, even those voters who lack a Photo ID and who appear to vote in-person may decline the option of voting a provisional ballot for the primary elections because they believe they cannot obtain a Photo ID and return with it within forty-eight hours.

Given that the State only recently began its education efforts concerning the 2006 Photo ID Act, and given the short period of time between the DOJ's preclearance of the State Election Board's rules and regulations and the July 18, 2006, primary elections and the corresponding primary run-off elections, the fact that relatively few Georgia voters have obtained Voter ID cards since the DOJ precleared the applicable rules and regulations certainly is not an indication that few Georgia voters lack Photo ID or that those Georgia voters who lack Photo ID are generally uninterested in voting in-person. Instead, those voters likely have not had sufficient time to become aware of the 2006 Photo ID Act's Photo ID requirements and to arrange to travel to a registrar's office and obtain a Voter ID card. As Mr. McIver testified at the July 12, 2006, hearing, the number of Voter ID cards issued increased daily after the State Election Board began airing its

PPSAs. This testimony indicates that voters who lack Photo ID very well may avail themselves of the Voter ID card option once the State has had sufficient time to reach those voters and the voters have had sufficient time to make arrangements to travel to their respective registrars' offices and obtain the cards.

Even if the State had made the effort to educate voters about the Photo ID requirement and to publicize the availability of Voter ID cards, requiring voters to obtain a Photo ID within the short time period before the July 18, 2006, primary and the corresponding primary run-off elections still is unduly burdensome. The State has provided only one piece of equipment for issuing Voter ID cards to each county, regardless of population size. Voters would have less than three weeks prior to the July 18, 2006, primary election to obtain Voter ID cards, and only one, or, for counties that have purchased additional equipment, perhaps two or three locations to obtain the cards. Many voters who are elderly, disabled, or have certain physical or mental problems simply cannot navigate that process or any long waits successfully.[1]

Further, some of the registrar's offices, particularly in large Georgia counties, may be a lengthy drive away from many of the citizens those registrar's offices service. Most of the registrar's offices are located in largely rural areas where mass transit likely is not available, and registered voters who have no driver's licenses or access to automobiles simply may not be able to obtain transportation to a registrar's office prior to the July 18, 2006, primary elections and the corresponding run-off elections.[2]

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[1] Going to a DDS service center to obtain a Photo ID card would also be burdensome for those voters. As the Court noted in its October 18, 2005, Order. many voters might have difficulty obtaining a Photo ID card from a DDS service center because Georgia has relatively few such centers, and the centers usually have lengthy lines.

Defendants, once again, argue that the 2006 Photo ID Act does not deprive voters of the right to vote. Defendants observe that voters can vote via mail-in absentee ballot without producing any Photo ID at all in most instances. As previously noted with respect to the 2005 Photo ID law, most voters likely would be unaware that they could vote via mail-in absentee ballot without a Photo ID. Further, although the State Election Board has begun to run PPSAs that discuss the availability of mail-in absentee voting without a Photo ID, those ads began to run only shortly prior to the July 18, 2006, primary elections. Voters who wished to vote via mail-in absentee ballot for those elections most likely would not have had sufficient time to complete a request for an absentee ballot, mail the request to the registrar's office, receive an absentee ballot, vote the absentee ballot, and return the absentee ballot to the registrar's office by mail sufficiently early to ensure the ballot's receipt by July 18, 2006.[3]

Further, the 2005 Photo ID Act also changed the law governing absentee voting to eliminate the conditions previously required for obtaining an absentee ballot, which had been in effect for some time. In connection with the 2005 Photo ID Act, counsel for the State Defendants stated that the State had not publicized the new requirements for absentee voting any more or less than the State publicized any other change in election law. Secretary of State Cox testified at the previous hearing that the absentee voting rules in effect prior to the passage of the 2005 Photo ID Act required voters to aver that they met one of several specified requirements to obtain an absentee ballot. Absent more information indicating that the State has made a further effort to inform Georgia voters concerning the new, relaxed absentee voting procedures, many Georgia voters simply may be unaware that the rules have changed. Those voters therefore still may believe that they must satisfy one of the former requirements to obtain an absentee ballot. Voters who cannot satisfy the former requirements likely will not even attempt to obtain an absentee ballot. Further, as discussed in the preceding paragraph, the State did not begin its voter education efforts sufficiently in advance of the July 18, 2006, primary elections to allow voters who learned of the availability of no-excuse mail-in absentee voting without a Photo ID to navigate that process successfully. Consequently, the Court simply cannot assume that Georgia voters who do not have a Photo ID could have made the arrangements necessary to vote via the mail-in absentee voting process for the July 18, 2006, primary elections and the corresponding primary run-off elections.

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[2] The Court noted in its October 18, 2005, Order that many voters who resided in rural areas similarly would have severe difficulty in traveling to a DDS service center to obtain a Photo ID card.

[3] The Court discusses the mail-in absentee voting process in more detail *infra*.

In any event, as Secretary of State Cox pointed out during the October 12, 2005, hearing, a mail-in absentee ballot is only counted if it is received by the registrar in the voter's jurisdiction by 7:00 p.m. on the day of the elections. Even absentee ballots postmarked by that date but delivered after 7:00

p.m. on election day are not counted. The only method voters have of ensuring that their votes are counted is to show up at their polling precinct on election day and vote in person or to hand-deliver their absentee ballots to the registrar in their jurisdiction before 7:00 p.m. on election day.[4]

As the Court previously noted, the absentee voting process also requires that voters plan sufficiently enough ahead to request an absentee ballot, to have the ballot delivered from the registrar's office via the United States Postal Service, to complete the ballot successfully, and to mail the absentee ballot to the registrar's office sufficiently early to allow the United States Postal Service to deliver the absentee ballot to the registrar by 7:00 p.m. on election day. The majority of voters-particularly those voters who lack Photo ID-would not plan sufficiently enough in advance of the July 18, 2006, primary elections to vote via mail-in absentee ballot successfully for those elections. In fact, most voters likely would not be giving serious consideration to the election or to the candidates until shortly before the election itself. Under those circumstances, and given the timing of the State's education efforts, it simply is unrealistic to expect that most of the voters who lack Photo IDs would take advantage of the opportunity to vote an absentee ballot by mail for the July 18, 2006, primary elections and the corresponding primary run-off elections.

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[4] The second method assumes voters know that they may hand-deliver absentee ballots and that voters know where to deliver those ballots. Many voters simply may believe that they can hand-deliver their absentee ballots to a polling place, which is not a viable alternative. Furthermore, many absentee voters do not drive or otherwise lack transportation. Although many organizations provide free transportation to the polls on election day, the availability of free transportation to the registrar's office to deliver an absentee ballot likely is limited or nonexistent.

Additionally, evidence submitted by Plaintiffs in connection with the 2006 Photo ID Act indicates that many Georgia voters have literacy skills that are below the level required to navigate the absentee voting process successfully without assistance. For those voters, absentee voting would not be an acceptable or reasonable alternative to in-person voting unless those voters could obtain help from someone else to negotiate the absentee voting process. It is unlikely that the voters would have sufficient time or resources to do so before the July 18, 2006, primary elections and the corresponding run-off elections.

For the reasons discussed above, with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections, absentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID. The fact that voters, in theory, may have the alternative of voting an absentee ballot without a Photo ID during the July 18, 2006, primary elections and the corresponding primary run-off elections thus does not relieve the burden on the right to vote caused by the Photo ID requirement.[5]

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[5] Defendants argue again that no constitutional right to vote in person exists, citing Oregon's policy of having elections conducted entirely by mail. Oregon's voting by mail structure differs significantly from Georgia's voting procedures. One major difference between Georgia's Photo ID requirement and Oregon's policy of conducting mail elections that is particularly noteworthy is that Oregon's policy places the same burden on every voter. Here, Georgia's Photo ID requirement places the burden of voting absentee on the very class of voters who will be least likely to navigate that method of voting successfully.

Additionally, the State argues that voters who do not have Photo ID will not be "turned away" from the polls; rather, those voters may vote a provisional ballot and return within forty-eight hours with a Voter ID card. Given the difficulty of obtaining a Voter ID card and Photo ID card discussed above, it is highly unlikely that many of the voters who lack Photo ID and who would vote via provisional ballots could obtain a Voter ID card or a Photo ID card and return to the polls or the registrar's office within the forty-eight hour period. Indeed, although many organizations are more than happy to transport individuals to polling places on election day, it is unlikely that those organizations or any other organization or individual would be able or willing to provide transportation to registrar's offices or DDS service centers to allow voters of provisional ballots to obtain Voter ID cards or Photo ID cards. The ability to vote a provisional ballot for the July 18, 2006, primary elections and the corresponding primary run-off elections thus is an illusion.

Further, many voters may not even attempt to vote a provisional ballot in person because they do not have a Photo ID, and they believe that they cannot make the necessary arrangements to obtain a Photo ID within forty-eight hours after casting their votes. As discussed above, given the State's lack of effort to publicize the requirements of the 2006 Photo ID Act and the availability of Voter ID cards to those voters who lack Photo ID, many of the voters who lack a Photo ID may not even know of the fact that a provisional ballot is available or where or how to obtain a Voter ID card. Additionally, the State Election Board's plan to advise affected voters of the 2006 Photo ID Act's Photo ID requirement by handing voters who appear at the polls on July 18, 2006, or for advance voting a letter explaining the 2006 Photo ID Act and describing how to obtain a Voter ID card, along with a provisional ballot, is too little, too late. As previously noted, given the characteristics of the Georgia voters who are most likely to need a Voter ID card, it is highly unreasonable to expect those voters to be able to go to their respective registrars' offices or DDS service centers and negotiate the process for obtaining a Voter ID card or Photo ID card within the forty-eight hour period required to have their provisional ballots counted. Faced with those circumstances, many of those voters likely will decide not to vote at all.

The right to vote is a delicate franchise. As the Court observed in its October 18, 2005, Order, a previous Plaintiff in the case, Plaintiff Tony Watkins, declined to pursue his claim concerning the 2005 Photo ID Act when he was informed that Defendants planned to depose him. Given the fragile nature of the right to vote, and the restrictions discussed above, the Court finds that the 2006 Photo ID Act imposes "severe" restrictions on the right to vote with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections. In particular, the 2006 Photo ID Act's Photo ID requirement makes the exercise of the fundamental right to vote extremely difficult for the July 18, 2006, primary elections and the corresponding primary run-off elections for voters currently without acceptable forms of Photo ID for whom obtaining a Photo ID or a Voter ID card would be a hardship. Unfortunately, the 2006 Photo ID Act's Photo ID requirement is most likely to prevent Georgia's elderly, poor, and African-American voters from voting in the July 18, 2006, primary elections and subsequent run-off elections. The Court again observes that for those citizens, the character and magnitude of their injury-the loss of their right to vote-is undeniably demoralizing and extreme, as those citizens are likely to have no other realistic or effective means of protecting their rights.

b. State Interest

The State and the State Defendants assert that the 2006 Photo ID Act's Photo ID requirement is designed to curb voting fraud. Undoubtedly, this interest is an important one. Unfortunately, the fact that the interest asserted is important and is legitimate does not end the Court's inquiry.

c. Extent to Which the State's Interest In Preventing Voter Fraud Makes It Necessary to Burden the Right to Vote

Finally, the Court must examine the extent to which the State's interest in preventing voter fraud makes it necessary to burden the right to vote. For the following reasons, the Court finds that the 2006 Photo ID Act's Photo ID requirement is not narrowly tailored to the State's proffered interest of preventing voter fraud. Secretary of State Cox testified at the previous hearing that her office has not received even one complaint of in-person voter fraud over the past nine years and that the possibility of someone voting under the name of a deceased person has been addressed by her Office's monthly removal of recently deceased persons from the voter roles. Additionally, although Defendants presented evidence from elections officials in connection with the 2005 Photo ID Act of fraud in the area of voting, all of that evidence addressed fraud in the area of voter registration and absentee voting, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The 2006 Photo ID statute, like its predecessor, thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

Rather than drawing the 2006 Photo ID Act narrowly to attempt to prevent the most prevalent type of voter fraud, the State drafted its Photo ID requirement to apply only to in-person voters, and to apply only to absentee voters who had registered to vote by mail without providing identification and who were voting absentee for the first time. By doing so, the State, in theory, once again left the field wide open for voter fraud by absentee voting. Under those circumstances, the Photo ID requirement is not narrowly tailored to serve its stated purposes-preventing voter fraud. *See Dunn,* 405 U.S. at 343, 92 S.Ct. 995 ("Statutes affecting constitutional rights must be drawn with 'precision,' and must be 'tailored' to serve their legitimate objectives. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' ") (citations omitted). Further, the State has a number of significantly less burdensome alternatives available to prevent in-person voting fraud, such as the voter identification requirements it previously used and numerous criminal statutes penalizing voter fraud, to discourage voters from fraudulently casting ballots or impersonating other voters. Given those available alternatives, the Court finds that the State easily could have avoided placing a severe burden on voters-the burden of requiring the voters to obtain Photo IDs before the July 18, 2006, primary elections and corresponding primary run-off elections-while still accomplishing its goal of preventing or deterring fraud in voting.

d. Summary

For the reasons discussed above, the Court finds that a number of significantly less burdensome alternatives exist to address the State's interest other than requiring voters to obtain Photo IDs prior to the July 18, 2006, primary elections and the corresponding primary run-off elections. As noted above, the burden on the affected voters to obtain a Photo ID in the short period prior to the July 18, 2006, primary elections and the corresponding run-off elections is severe. Under those circumstances, the State Defendants' proffered interest does not justify the severe burden that the 2006 Photo ID Act's Photo ID requirement places on the right to vote with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections. For those reasons, the Court concludes that the Photo ID requirement fails even the *Burdick* test with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections.

Certainly, the State's attempt to make obtaining a Photo ID easier by allowing voters to avoid the DDS service centers is admirable, as is the State's attempt to avoid imposing a poll tax by making Voter ID cards available to voters without a fee. Unfortunately, the State's attempt to educate voters did not began sufficiently early to relieve the undue burden that the 2006 Photo ID Act places on voters who lack Photo ID. Indeed, the State did not seriously begin to educate its voters concerning the requirements of the 2006 Photo ID Act and the availability of a free Voter ID card until approximately two weeks before the July 18, 2006, primary elections. Under those circumstances, the State has failed to allow sufficient time to educate its voters, and has not taken into consideration the hardships that requiring voters to obtain a Voter ID card or Photo ID card within such a short time frame will place on many of the voters affected by the 2006 Photo ID Act.

In issuing this Order, the Court does not intend to imply that all Photo ID requirements would be invalid or overly burdensome on voters. Certainly, the Court can conceive of ways that the State could impose and implement a Photo ID requirement without running afoul of the requirements of the Constitution. Indeed, if the State allows sufficient time for its education efforts with respect to the 2006 Photo ID Act and if the State undertakes sufficient steps to inform voters of the 2006 Photo ID Act's requirements before future elections, the statute might well survive a challenge for such future. The 2006 Photo ID Act, however, fails the constitutional test with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections. Accepting that preventing voter fraud is a legitimate and important State concern, a number of significantly less burdensome alternatives exist to address the State's interest in preventing voter fraud for the July 18, 2006, primary elections and corresponding primary run-off elections. For those reasons, the Court finds that

Plaintiffs have a substantial likelihood of succeeding on their claim that the 2006 Photo ID Act violates the Equal Protection Clause because it imposes an undue burden on the right to vote with respect to the July 18, 2006, primary elections and primary run-off elections.

2. Poll Tax

Alternatively, Plaintiffs argue that the 2006 Photo ID Act is a constructive poll tax. The State attempted to address the poll tax concerns by making Voter ID cards available without payment of a fee for the cards themselves. Plaintiffs, however, argue that voters who do not have an approved Photo ID must bear the costs of traveling to a registrar's office in order to a Voter ID card, as well as the costs for obtaining any documents necessary to obtain a Voter ID card.

The Twenty-Fourth Amendment to the United States Constitution provides: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV. The Twenty-Fourth Amendment thus applies to elections for certain federal officials.

Plaintiffs contend that the Voter ID card requirement is a constructive poll tax because voters who do not have other acceptable forms of Photo ID must obtain the Voter ID card to cast their votes in person at the polls. Although Defendants point out that the Voter ID cards are free, Plaintiffs argue that the Voter ID card is one more burden that voters who lack a Photo ID must bear, and that this burden is a constructive poll tax.

In *Harman v. Forssenius,* 380 U.S. 528, 85 S.Ct. 1177, 14 L.Ed.2d 50 (1965), the Supreme Court struck down a Virginia requirement that a federal voter either pay the customary poll taxes as required for state elections or file a certificate of residence. The Supreme Court reasoned that the requirement to file a certificate of residence imposed a material requirement solely upon those who refused to surrender their right to vote in federal elections without paying the poll tax, and, consequently, the requirement violated the Twenty-Fourth Amendment. 380 U.S. at 541-42, 85 S.Ct. 1177. The Supreme Court stated:

> It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. "Constitutional rights would be of little value if they could be ... indirectly denied," or "manipulated out of existence." Significantly, the Twenty-fourth Amendment does not merely insure that the franchise shall not be "denied" by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be "denied or abridged" for that reason. Thus, like the Fifteenth Amendment, the Twenty-fourth "nullifies sophisticated as well as simple-minded modes" of impairing the right guaranteed. "It hits onerous procedural requirements which effectively handicap exercise of the franchise" by those claiming the constitutional immunity.

Thus, in order to demonstrate the invalidity of § 24-17.2 of the Virginia Code, it need only be shown that it imposes a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax. Section 24-17.2 unquestionably erects a real obstacle to voting in federal elections for those who assert their constitutional exemption from the poll tax. As previously indicated, the requirement for those who wish to participate in federal elections without paying the poll tax is that they file in each election year, within a stated interval ending six months before the election, a notarized or witnessed certificate attesting that they have been continuous residents of the State since the date of registration (which might have been many years before under Virginia's system of permanent registration) and that they do not presently intend to leave the city or county in which they reside prior to the forthcoming election. Unlike the poll tax bill which is sent to the voter's residence, it is not entirely clear how one obtains the necessary certificate.... This is plainly a cumbersome procedure. In effect, it amounts to annual re-registration which Virginia officials have sharply contrasted with the "simple" poll tax system. For many, it would probably seem far preferable to mail in the poll tax payment upon receipt of the bill. In addition, the

> certificate must be filed six months before the election, thus perpetuating one of the disenfranchising characteristics of the poll tax which the Twenty-fourth Amendment was designed to eliminate. We are thus constrained to hold that the requirement imposed upon the voter who refuses to pay the poll tax constitutes an abridgement of his right to vote by reason of failure to pay the poll tax.
>
> The requirement imposed upon those who reject the poll tax method of qualifying would not be saved even if it could be said that it is no more onerous, or even somewhat less onerous, than the poll tax. For federal elections, the poll tax is abolished absolutely as a pre-requisite to voting, and no equivalent or milder substitute may be imposed. Any material requirement imposed upon the federal voter solely because of his refusal to waive the constitutional immunity subverts the effectiveness of the Twenty-fourth Amendment and must fall under its ban.

380 U.S. at 540-42, 85 S.Ct. 1177 (citations omitted; footnote omitted).

Similarly, in *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966), the Supreme Court struck down Virginia's poll tax requirement for state elections, finding that the poll tax violated the Equal Protection Clause. The Court stated:

> We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Our cases demonstrate that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate. Thus without questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot, we held ... that a State may not deny the opportunity to vote to a bona fide resident merely because he is a member of the armed services... Previously we had said that neither homesite nor occupation "affords a permissible basis for distinguishing between qualified voters within the State." We think the same must be true of requirements of wealth or affluence or payment of a fee.

383 U.S. at 666-67, 86 S.Ct. 1079 (citations omitted). The Court further observed:

> [W]e must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally

> disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. In this context-that is, as a condition of obtaining a ballot-the requirement of fee paying causes an "invidious" discrimination that runs afoul of the Equal Protection Clause.

Id. at 668, 86 S.Ct. 1079.

After the enactment of the 2006 Photo ID Act's Photo ID requirement, voters who do not have other acceptable forms of Photo ID must obtain Voter ID cards to be able to vote in person at the polls. Voters who choose not to obtain Voter ID cards, or who are unable to obtain Voter ID cards for one reason or another, are free to vote via mail-in absentee ballot. As discussed *supra* Part III.A.1., however, mail-in absentee voting is unavailable for the July 18, 2006, primary elections and corresponding run-off elections to many voters who do not have forms of Photo ID-either because those voters are unaware of their eligibility to vote via mail-in absentee ballot or because the voters are unable to navigate the mail-in absentee voting process successfully. As a practical matter, therefore, many voters who do not have other acceptable forms of Photo ID must obtain a Voter ID card to cast their votes successfully and to ensure that their votes will be counted.

Because, as a practical matter, most voters who do not possess other forms of Photo ID must obtain a Voter ID card to exercise their right to vote, even though those voters have no other need for a Photo ID, requiring those voters to obtain a Voter ID card effectively places a burden on the right to vote. However, the Voter ID cards are available at no cost, and the State has eliminated the affidavit requirement for a fee waiver that the Court previously found objectionable with respect to the 2005 Photo ID Act. In support of their claim that the 2006 Photo ID Act still constitutes a poll tax, Plaintiffs argue that any material requirement imposed upon a voter solely because of the voter's refusal to pay a poll tax violates the Twenty-fourth Amendment. *Harman,* 380 U.S. at 542, 85 S.Ct. 1177. According to Plaintiffs, a voter who does not have another acceptable form of Photo ID and who wishes to vote must, as a practical matter, obtain a Voter ID card. To obtain a Voter ID card, the voter must arrange for transportation to a registrar's office, if that option is available, and must navigate the process successfully.

The Court agrees with the United States Court for the Southern District of Indiana's reasoning in rejecting a similar poll tax claim in a lawsuit concerning Indiana's Photo ID requirement for voting:

> This argument represents a dramatic overstatement of what fairly constitutes a "poll tax." It is axiomatic that "(e)lection laws will invariably impose some burden upon individual voters," *Burdick v. Takuski* [sic], 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). Thus, the imposition of tangential burdens does not transform a regulation into a poll tax. Moreover, the cost of time and transportation cannot plausibly qualify as a prohibited poll tax because those same "costs" also result from

> voter registration and inperson voting requirements, which one would not reasonably construe as a poll tax. Plaintiffs provide no principled argument in support of this poll tax theory.

Ind. Democratic Party v. Rokita, No. 1:05-CV-0634-SEB-VSS, 2006 WL 1005037, at *38 (S.D.Ind. Apr.14, 2006). The Court therefore finds that Plaintiffs do not have a substantial likelihood of success on their poll tax claim.

Further, in this case, like *Rokita,* "[t]he only incidental cost which might plausibly approach being a poll tax is the fee assessed to obtain a birth certificate," which voters, in turn, may use to obtain a Voter ID card. *Rokita,* 2006 WL 1005037, at *38. Plaintiffs' contention that some voters might be required to pay a fee to obtain a birth certificate in order to obtain a Voter ID card, however, is wholly speculative. Plaintiffs have failed to show that any particular voter would actually be required to incur that cost in order to vote. Indeed, under the 2006 Photo ID Act and the accompanying rules and regulations adopted by the State Election Board, a birth certificate is only one of many documents that the registrar may accept to issue a Voter ID card. Consequently, Plaintiffs have failed to demonstrate that the cost of obtaining a birth certificate is sufficiently tied to the requirements of voting so as to constitute a poll tax. *Id.* For those reasons, the Court finds that Plaintiffs have no substantial likelihood of succeeding on their poll tax claim.

3. Civil Rights Act of 1964

Alternatively, Plaintiffs contend that the 2006 Photo ID Act's Photo ID requirement violates the

Civil Rights Act of 1964, 42 U.S.C.A. § 1971, by applying different standards to absentee and in-person voters within the same county and by precluding voting due to an omission that is not material to the right to vote under Georgia law. Defendants argued with respect to the 2005 Photo ID Act that both of Plaintiffs' claims under § 1971 failed as a matter of law because § 1971 does not furnish a private right of action. In the October 18, 2005, Order, the Court rejected that argument, concluding that the Eleventh Circuit had addressed the issue of whether § 1971 could be enforced by a private right of action in *Schwier v. Cox,* 340 F.3d 1284 (11th Cir.2003), and had concluded that such an action was available. 340 F.3d at 1297. The Court consequently found as a matter of law that Plaintiffs could assert a private right of action under § 1971 for the alleged voting rights violations at issue. The Court applies that ruling for purposes of Plaintiffs' Second Motion for Preliminary Injunction.

a. 42 U.S.C.A. § 1971(a)(2)(A)

First, Plaintiffs argue that the 2006 Photo ID Act's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(A) because the 2006 Photo ID Act applies different standards in determining whether individuals within the same county or other political subdivision are qualified to vote. 42 U.S.C.A. § 1971(a)(2)(A) provides that "[n]o person acting under color of state law shall," when

> determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such

> law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.

42 U.S.C.A. § 1971(a)(2)(A).

Specifically, Plaintiffs argue that the 2006 Photo ID Act's Photo ID requirement runs afoul of this subsection because the requirement applies different standards to voters who reside in the same city or county who vote absentee than it applies to people who vote in person. Plaintiffs note that the 2006 Photo ID Act's Photo ID requirement applies only to voters who vote in person at the polls, while voters who vote absentee by mail do not have to comply with the Photo ID requirement unless they are registering to vote absentee, or are voting absentee for the first time. Additionally, voters who registered by mail and are voting by absentee ballot for the first time may include a utility bill or bank statement with their absentee ballot as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

Plaintiffs point out that although the stated purpose of the 2006 Photo ID Act's Photo ID requirement is to prevent voter fraud, the requirement does nothing to address the largest sources of potential voter fraud-absentee voting and fraudulent voter registrations. In support of this argument, Plaintiffs cite to correspondence from Secretary of State Cox to Governor Perdue and the Georgia State Senate with respect to the 2005 Photo ID Act indicating that over her tenure, she and her staff could not recall a single case or complaint of voter impersonation at the polls. In contrast, her office received numerous complaints of fraudulent absentee voting during the same time period. The 2005 Photo ID Act, in Secretary of State Cox's opinion, expanded opportunities for absentee voting by mail by eliminating the previous restrictions on obtaining an absentee ballot. Further, evidence in the record indicates that no complaints of fraudulent in-person voting had been received since the Court's October 18, 2005, Order, even though the State Election Board had received complaints of fraudulent voter registrations and fraud in absentee voting. Consequently, Plaintiffs contend that the 2006 Photo ID Act's Photo ID requirement, by its plain language, clearly violates 42 U.S.C.A. § 1971(a)(2)(A) because it imposes standards on voters in the same county or city that differ for absentee voters versus in-person voters.

Defendants contend that the 2006 Photo ID Act does not apply different standards in determining whether any individual is qualified under State law to vote in person in any election. Defendants argue that individuals who choose to vote in person are all held to the same standard regardless of their race or color, and that individuals who choose to vote by absentee ballot are all held to the same standard regardless of their race or color.

The United States District Court for the Southern District of Indiana recently rejected a claim under § 1971(a)(2)(A) that Indiana's Photo ID Act applied different standards to voters by requiring in-person voters to present a Photo ID, while allowing absentee voters to cast their ballots without presenting a Photo ID. *Rokita,* 2006 WL 1005037, at *47. The court observed that even if § 1971 did apply to the plaintiffs' claims, it would not provide the plaintiffs with the relief they sought. *Id.* The court observed that:

> [A]bsentee voting is an *inherently* different procedure from voting in person, requiring a state which allows both inperson and absentee voting to apply different "standards, practices, or procedures" to these two groups of voters.... The only "difference" to which Plaintiffs seemingly object is the photo identification requirement, but in doing so they proceed without distinguishing this requirement from the plethora of other "standards, practices, and procedures" applicable to either absentee or in-person voters. Plaintiffs' proposed construction of § 1971(a)(2)(A) would compel the invalidation of vast portions of the Indiana Election Code. We will not bring about such a radical departure from settled law by our decisions here.

Id. (footnote omitted).

In Georgia, as in Indiana, absentee voting and in-person voting are inherently different processes, and both processes use different standards, practices, and procedures. The Photo ID requirement established by the 2006 Photo ID Act for in-person voting is only one of those different standards, practices, and procedures. Adopting Plaintiffs' proposed interpretation of § 1971(a)(2)(A) thus would require the invalidation of vast portions of Georgia's election statutes-something that this Court is understandably reluctant to do, especially when those other statutes are not before the Court. Consequently, the Court finds that Plaintiffs do not have a substantial likelihood of success on their § 1971(a)(2)(A) claim.

b. 42 U.S.C.A. § 1971(a)(2)(B)

Second, Plaintiffs contend that the 2006 Photo ID Act's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(B), which prohibits a person acting under color of law from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 42 U.S.C.A. § 1971(a)(2)(B).

Plaintiffs contend that to be qualified to vote in Georgia, a voter need only: (1) be a United States citizen; (2) be a legal resident of the county where he or she seeks to register; (3) be at least 18 years old; and (4) not be serving a sentence for a felony conviction involving moral turpitude or have been found mentally incompetent by a judge. Ga. Const. art. II, § 1. Plaintiffs observe that none of those requirements include presenting a Photo ID, and that a Photo ID therefore cannot be material to determining whether an individual is qualified under State law to vote. In any event, Plaintiffs argue that because the 2006 Photo ID Act's Photo ID requirement does not apply to most absentee voters, the Photo ID requirement cannot be said to be "material" for purposes of 42 U.S.C.A. § 1971(a)(2)(B). Defendants argue that Plaintiffs' claim must fail because the 2006 Photo ID Act's Photo ID requirement does not add any condition on voter qualifications and because there is no error or omission on any record that is being used to disqualify any potential voter.

The United States District Court for the Southern District of Indiana recently rejected a similar claim under § 1971(a)(2)(B). *Rokita,* 2006 WL 1005037, at *48. That court reasoned:

> Plaintiffs' arguments regarding § 1971(a)(2)(B) similarly overstate the reach of that portion of the statute which prohibits the denial of the right to vote "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 42 U.S.C. § 1971(a)(2)(B). Plaintiffs contend that SEA 483 violates this part of the statute because otherwise qualified, registered voters will be prevented from voting, or forced to use a provisional ballot, if they do not present a qualified photo identification. Defendants assert that § 1971(a)(2)(B) is not applicable to this case because SEA 483 merely changes the manner by which individuals prove their identity and does not require individuals to provide any additional information on any voting application or form.
>
> We agree with Defendants' assertion that the act of presenting photo identification in order to prove one's identity is by definition not an "error or omission on any record or

> paper" and, therefore, § 1971(a)(2)(B) does not apply to this case.

Id. at *48 (footnote omitted).

Applying the reasoning of the *Rokita* court, the Court finds that the Photo ID requirement is not "an error or omission on any record or paper relating to any application, registration, or other act requisite to voting." *Rokita,* 2006 WL 1005037, at *48. Further, as the Eleventh Circuit has noted, § 1971(a)(2)(B) "was intended to address the practice of requiring unnecessary information for voter registration with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters." *Schwier,* 340 F.3d at 1294. The 2006 Photo ID Act, however, is not such a practice. Consequently, the 2006 Photo ID Act's Photo ID requirement does not violate § 1971(a)(2)(B), and Plaintiffs therefore do not have a substantial likelihood of succeeding on the merits of this claim.

4. Voting Rights Act Claim

Finally, Plaintiffs assert a claim that the 2006 Photo ID Act's Photo ID requirement violates Section 2 of the Voting Rights Act, 42 U.S.C.A. § 1973(a). That statute provides, in relevant part:

> No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to

> vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

42 U.S.C.A. § 1973(a). 42 U.S.C.A. § 1973(b) sets forth the requirements for establishing a violation of § 1973(a), and states:

> A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C.A. § 1973(b). Plaintiffs did not address this claim in their brief in support of their Second Motion for Preliminary Injunction; therefore, the Court need not, and does not, address the claim in its Order.

C. Irreparable Harm

For the reasons discussed *supra* Part III.B., the 2006 Photo ID Act's Photo ID requirement unduly burdens the fundamental right to vote with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections, and likely will cause a number of Georgia voters to be unable to cast a vote and to have their votes counted in those elections.

Although Defendants argue that the 2006 Photo ID Act's Photo ID requirement will not deprive a single Georgia voter of the right to vote, because voters without Photo IDs can vote absentee ballots, as a practical matter, a significant number of the registered Georgia voters who lack Photo IDs likely are unaware of that alternative or would not be able to navigate the absentee ballot voting process successfully for the July 18, 2006, primary elections and the corresponding primary run-off elections. Voters who lack Photo IDs and are unaware of the absentee voting alternative, yet still desire to vote, must undertake the often difficult and burdensome process of obtaining a Voter ID card for the July 18, 2006, primary elections and the corresponding primary run-off elections. The 2006 Photo ID Act's Photo ID requirement thus has the likely effect of causing a significant number of Georgia voters to forego going to the polls or to forego obtaining and voting an absentee ballot.

Defendants note that the *Lake* court already has entered a temporary restraining order against the 2006 Photo ID Act for the July 18, 2006, primary elections and the corresponding primary run-off elections. The *Lake* court's temporary restraining order, however, is due to expire thirty days from its issuance, or prior to the corresponding primary run-off elections. Given those circumstances, the Court cannot find that the *Lake* court's temporary restraining order prevents Plaintiffs from suffering irreparable harm if this Court does not enter a preliminary injunction.

For the reasons discussed above, Plaintiffs have demonstrated that they or their constituents will suffer irreparable harm if the Court declines to enter a preliminary injunction with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections. This factor therefore weighs in favor of granting Plaintiffs' Motion for Preliminary Injunction.

D. Threatened Injury to Plaintiffs Weighed Against the Damage to the State Caused by a Preliminary Injunction

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a preliminary injunction. Defendants argue that the entry of a preliminary injunction likely will result in confusion for voters, poll workers, and elections officials, and may result in an inconsistent application of the identification requirements. Further, Defendants argue that the evidence indicates that local elections officials lack sufficient time to conduct training for poll workers and to educate the public.

Given that the right to vote is a fundamental right and is preservative of all other rights, denying an individual the right to vote works a serious, irreparable injury upon that individual. Considering the right at issue and the likely injury caused by not entering a preliminary injunction, the potential injury to Plaintiffs outweighs the harm to the State and Defendants caused by entering a preliminary injunction for the July 18, 2006, primary elections and the corresponding primary run-off elections. Further, Defendants already are preparing to comply with the *Lake* court's temporary restraining order, which issued on July 7, 2006, and issuing a preliminary injunction in this case therefore will not place an additional burden Defendants. This factor therefore counsels in favor of entering a preliminary injunction.

E. Public Interest

Finally, the Court must determine whether issuing a preliminary injunction will serve the public interest. Preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes counted in any given election. As discussed *supra* Part III.B., however, the 2006 Photo ID Act's Photo ID requirement, like its predecessor, unduly burdens the right of many properly registered Georgia voters to vote for the July 18, 2006, primary elections and the corresponding run-off elections, and has the likely effect of causing many of those voters to forego voting or of precluding those voters from voting at the polls. Because the right to vote is a fundamental right, removing the undue burdens on that right imposed by the 2006 Photo ID Act's Photo ID requirement serves the public interest. This factor therefore counsels in favor of granting Plaintiffs' Motion for Preliminary Injunction.

F. Summary

In sum, the four factors for granting a preliminary injunction weigh in favor of Plaintiffs. In particular, Plaintiffs have a substantial likelihood of success on the merits of their claim that the 2006 Photo ID

Act's Photo ID requirement unduly burdens the right to vote, at least with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections. Plaintiffs and their constituents also will suffer irreparable harm if the Court does not grant a preliminary injunction with respect to those elections, and the threatened harm to Plaintiffs outweighs the injury to Defendants and the State that will result from issuing a preliminary injunction. Finally, entering a preliminary injunction for the July 18, 2006, primary elections and the corresponding primary run-off elections serves the public interest. For those reasons, the Court grants Plaintiffs' Second Motion for Preliminary Injunction with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections.

IV. Conclusion

ACCORDINGLY, the Court **GRANTS** Plaintiffs' Second Motion for Preliminary Injunction [108] with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections, and **ENJOINS** and restricts Defendants individually and in their official capacities from enforcing or applying the 2006 Photo ID Act, which requires voters to present a Photo ID as a pre-condition to in-person voting in Georgia, to deny Plaintiffs or any other registered voter in Georgia admission to the polls, a ballot, or the right to cast their ballots and to have their ballots counted because of their failure or refusal to present a Photo ID with respect to the July 18, 2006, primary elections and the corresponding primary run-off elections. The Court will revisit this injunction with respect to the general elections to be held in November 2006.

It is so ORDERED, this the 14th day of July, 2006.

Harold J. Murphy
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Case No. 4:05-CV-0201-HLM
September 15, 2006

COMMON CAUSE/GEORGIA, ET AL.

V.

EVON BILLUPS, ET. AL

ORDER

This case is an action to have the photo identification ("Photo ID") requirement set forth in Senate Bill 84 ("The 2006 Photo ID Act"), declared unconstitutional both on its face and as applied, and to enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article 11, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971 (a)(2)(A) and (a)(2)(13)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973 (a)). This case is before the Court on Plaintiffs' Motion for Hearing on Plaintiffs' Second Motion for Preliminary Injunction in Advance of the September Special Elections [137].

I. Procedural Background

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs initially asserted that the Photo ID requirement in the 2005 Amendment to O.C.G.A. § 21-2-417 (Act No. 53) ("The 2005 Photo ID Act") violated the Georgia Constitution, was a poll tax that violated the Twenty-Fourth Amendment and the Equal Protection Clause, unduly burdened the fundamental right to vote, violated the Civil Rights Act of 1964, and violated Section 2 of the Voting Rights Act of 1965.

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims. Finally, on October 12, 2005, Plaintiffs filed their First Amendment to Complaint, which addressed the issue of standing for the organizational Plaintiffs.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. (Oct. 12, 2005, Hr'g Tr.) During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions. (Id.)

On October 18, 2005, the Court entered an Order granting Plaintiffs' Motion for Preliminary Injunction and finding that Plaintiffs had a substantial likelihood of success on their claims that the 2005 Photo ID Act unduly burdened the right to vote, and that the 2005 Photo ID Act constituted a poll tax. (Order of Oct. 18, 2005.) On October 19, 2006, the Court denied the State Defendants' Motion to Dismiss Individual Capacity Claims. (Order of Oct. 19, 2005.) On October 20, 2005, the Court denied the State Defendants' Motion to Stay

Preliminary Injunction Pending Appeal. (Order of Oct. 20, 2005.)

The State Defendants appealed the October 18, 2005, Order to the United States Court of Appeals for the Eleventh Circuit, requesting that the Eleventh Circuit stay the Court's October 18, 2005, Order pending resolution of the appeal. On October 27, 2005, the Eleventh Circuit denied the State Defendants' Motion to stay the October 18, 2005, Order pending resolution of the appeal.

In January 2006, the Georgia General Assembly passed the 2006 Photo ID Act, which Governor Purdue signed into law. On February 23, 2006, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. In that Motion, Plaintiffs sought permission to amend their First Amended to Complaint to assert claims that both the 2005 Photo ID Act and the 2006 Photo ID Act violated the Georgia Constitution, the federal Equal Protection Clause, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964, and Section 2 of the Voting Rights Act of 1965. On March 2, 2006, the Court held a telephone conference with counsel to discuss the issues relating to preclearance of the 2006 Photo ID Act by the United States Department of Justice ("DOJ"). The Court stayed the proceedings in this case pending notification of the DOJ's decision concerning preclearance of the 2006 Photo ID Act. (Order of Mar. 2, 2006.)

On April 21, 2006, Secretary of State Cathy Cox filed a Notice of Section 5 Preclearance of Act 432 (SB 84). On that same day, the Court entered an Order lifting the stay in this case, and setting forth a briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction. (Order of Apr. 21, 2006.) On

April 26, 2006, Plaintiffs filed their Second Amended Complaint.

On May 5, 2006, Plaintiffs filed a Motion to Revise Scheduling Order of April 21, 2006, pending the State Election Board's adoption of rules and regulations implementing the 2006 Photo ID Act, and pending DOJ preclearance of those rules and regulations. On that same day, the Court approved a Consent Order revising the briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction to require Plaintiffs to file that Motion within ten days after the rules and regulations adopted by the State Election Board received preclearance from the DOJ. (Order of May 5, 2006.)

On May 10, 2006, Secretary of State Cathy Cox and the State Election Board filed a Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief in Part. On May 25, 2006, Plaintiffs filed a Second Motion for Order to Certify Questions of State Law to the Georgia Supreme Court. On June 29, 2006, the Court entered an Order granting the Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief in Part, dismissing Counts One and Three of Plaintiffs' Second Amended Complaint, as well as the portions of Counts Two, Five, and Six of Plaintiffs' Second Amended Complaint that challenged the 2005 Photo ID Act. (Order of June 29, 2006.) In that same Order, the Court denied Plaintiffs' Second Motion for Order to Certify Questions of State Law to the Georgia Supreme Court. (Id.)

After the Court's June 29, 2006, Order, the following claims asserted in Plaintiffs' Second Amended Complaint remain pending. In Count Two of their Second Amended Complaint, Plaintiffs contend that the Photo I D requirement imposes an undue burden on the right to vote, in violation of the Equal Protection Clause. (Second Am. Compl. ¶¶ 89-91.) In Count Four of their Second Amended Complaint, Plaintiffs assert that the 2006 Photo ID Act is an unconstitutional poll tax if it is construed or applied to require voters to pay a fee for a birth certificate or other documents to obtain a Georgia voter Photo ID card. (Id. ¶¶ 96-97.) In Count Five of their Second Amended Complaint, Plaintiffs allege that the Photo ID requirement violates the Civil Right Act of 1964, as set forth in 42 U.S.C.A. §§ 1971(a)(2)(A) and 1971 (a)(2) (B). (Id. ¶¶ 98-102.) Finally, in Count Six of their Second Amended Complaint, Plaintiffs assert that the Photo ID requirement violates Section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973(a). (Id. ¶¶ 103-106.)

On July 5, 2006, Plaintiffs filed their Second Motion for Preliminary Injunction. Plaintiffs sought to have the 2006 Photo ID Act declared invalid, both on its face and as applied, and to enjoin its enforcement. Plaintiffs contended that the 2006 Photo ID Act imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article 11, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the United States Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. §§ 1 971 (a)(2)(A) and (a)(2)(B)), Section 2 of the Voting Rights Act of 1965 (42 U.S. C.A. § 1973(a)), and 42 U.S.C.A. §§ 1 983 and 1988. Plaintiffs requested that the Court enter a preliminary injunction that prohibits Defendants from: (1) enforcing or attempting to enforce or apply the 2006 Photo ID Act and the regulations issued by the State Election Board under that Act at any elections in Georgia; or (2) discouraging, interfering with, or preventing any person who is lawfully registered from voting in person in any such elections, pending a final trial on the merits or a further Order from the Court. Plaintiffs requested that the Court enjoin Defendants" and all state or local election officials be further enjoined from making any public announcement or statements or other communications that advise registered voters or election officials in Georgia that registered voters may not cast a ballot in any election if the voter does not have one of the forms of photo identification specified in the 2006 Photo ID Act." (Pls.' Mot. Second Prelim. Inj. at 2.) Plaintiffs also asked the Court to order and direct Defendants "to send prompt written notice to each of the 675,000 registered voters who have been identified by the Secretary of State as not having Georgia driver's licenses, informing them that they are not required to present photographic identification as a condition to being admitted to the polls or allowed to vote and that they will not be discouraged, interfered with, or otherwise prevented from voting in person by defendants or other election officials on the ground that they are unable to present photographic identification to election officials at the polls." (Id. at 2-3.)

On July 7, 2006, the State Election Board filed a Motion to Dismiss Plaintiffs' Second Motion for Preliminary Injunction and to Cancel Hearing. That Motion to Dismiss followed a temporary restraining order issued by the Superior Court of Fulton County, Georgia, on July 7, 2006, enjoining the defendants in that case from enforcing the 2006 Photo ID Act during the July 18, 2006, primary election or any resulting run-off election. *Lake v. Perdue,* Civil Action File No. 2006CV119207, slip op. at 3-4 (Fulton County Super. Ct. July 7, 2006.) The plaintiffs in Lake had argued that the 2006 Photo ID Act violated the Georgia Constitution. On July 10, 2006, following a telephone conference with counsel, the Court entered an Order indicating that the Court would postpone the July 12, 2006, preliminary injunction hearing in this case if the Supreme Court of Georgia entered an Order denying the Lake defendants' request to stay the temporary restraining order in that case prior to July 12, 2006. (Order of July 12, 2006.)

On July 12, 2006, the Court held a hearing concerning Plaintiffs' Second Motion for Preliminary Injunction. (July 12, 2006, Hr'g Tr.) Near the conclusion of the hearing, counsel received information that the Georgia Supreme Court had denied the Lake defendants' request to stay the temporary restraining order in that case, leaving the temporary restraining order in place for at least thirty days. (Id.)

At the conclusion of the July 12, 2006, hearing, the Court orally granted Plaintiffs' Second Motion for Preliminary Injunction with respect to Plaintiffs' claim under the Equal Protection Clause. (July 12, 2006, Hr'g Tr.) On July 14, 2006, the Court entered a written Order that formally set forth the Court's findings and conclusions concerning Plaintiffs' Second Motion for Preliminary Injunction. (Order of July 14, 2006.) The Court granted Plaintiffs' Second Motion for Preliminary Injunction solely with respect to the July 2006 primary elections and associated run-offs, reasoning that 2006 Photo ID Act posed an undue burden on certain voters with respect to those elections. (Id.)

The Court declined to extend the preliminary injunction to coyer subsequent elections, reasoning that if the State Defendants continued their education efforts with respect to the 2006 Photo ID Act, the requirements of that Act might no longer prove unduly burdensome for voters in subsequent elections. (Id.)

After the Court's July 14, 2006, Order, and after the Georgia Supreme Court's refusal to stay the temporary restraining order issued in the *Lake* case, the State Defendants stopped all of their attempts to educate voters concerning the 2006 Photo ID Act. In early September 2006, the State Election Board voted to resume those educational efforts.

On September 5, 2006, the Court held a telephone conference with the parties to address Plaintiffs' concerns with respect to the educational efforts and the application of the 2006 Photo ID Act to the September 2006 special elections. On the following day, Plaintiffs filed their Motion for Hearing on Plaintiffs' Second Motion for Preliminary Injunction in Advance of the September Special Elections. The Court scheduled a third preliminary injunction hearing to address that Motion for September 14, 2006.

On September 14, 2006, the Court held its third preliminary injunction hearing in this case. (Sept. 14, 2006, Hr'g Tr.) At the conclusion of the September 14, 2006, hearing, the Court verbally granted Plaintiffs' request for a preliminary injunction with respect to the September 2006 special elections. (Id.) This Order memorializes the Court's reasons for issuing that injunction.

II. Factual Background

The Court's October 18, 2005, Order and July 14, 2006, Order set forth an exhaustive summary of Plaintiffs' allegations and the evidence presented by the parties in connection with the October 12, 2005, and July 13, 2006, hearings. (Order of Oct. 18, 2005; Order of July 14, 2006.) The Court incorporates the Background portions of those Orders into this Order, and does not repeat those portions of the Orders here. The Court provides the following background summary to reflect the evidence presented during the September 14, 2006, hearing and to set forth information relevant to the Court's latest ruling.

Prior to the July 18, 2006, primary elections, the State Election Board approved a voter education piece listing the acceptable forms of identification, explaining where and how to obtain a Voter ID card or a State ID card, and stating that voters may vote an absentee ballot without providing Photo ID. (Dec. of Claud L. McIver, 111 ¶ 11 & Ex. 2.)

The State Election Board planned for registrars to hand out the piece to voters during the absentee voting period beginning on July 10, 2006, as well as at the polls on July 18, 2006. (Id.) For larger counties, the State Election Board printed and distributed the education piece, and directed the counties to distribute the piece during advance voting and at the polls on July 18, 2006. (Id. ¶ 12.) For smaller counties, the State Election Board provided the template for the piece, supplied paper, and instructed the counties to print the piece for distribution during early voting and on primary election day. (Id.)

Prior to the July 18, 2006, primary elections, the State Election Board approved television and radio public service announcements ("PPSAs") to be aired to inform voters of the Photo ID requirement contained in the 2006 Photo ID Act and the availability of a Voter ID card. (McIver Decl. ¶ 18.) The radio ads began to air on Friday, July 7, 2006, on over 100 stations, and were scheduled to run three times each day. (Id. ¶ 19.) The radio PPSAs ran on the Clear Channel network, which consists of 115 radio stations in Georgia. (July 12, 2006, Hr'g Tr.) The network has a total estimated listening population of 900,000, including individuals who reside in neighboring states. (Id.) Some of the radio PPSAs air very early on Saturday and Sunday mornings. (Id.) According to Mr. McIver, the State Election Board selected the best option that it had, other than buying very expensive spots. (Id.)

The television ads began to air on Wednesday, July 5, 2006, on the 150 Georgia affiliates of Northland Cable. (McIver Decl. 120.) The Georgia Association of Broadcasters also distributed the television ads to all of its affiliates, which include all Georgia television stations. (Id. ¶ 21.) Those ads began to run on or before July 7, 2006 (Id.) Further, Claud L. McIver, III, the Vice-Chair of the State Elections Board, appeared for numerous interviews concerning voter education that aired on radio and television stations prior to the July 18, 2006, primary elections. (McIver Decl. 122.) The State Election Board has made information concerning the process and requirements for obtaining Voter ID cards available to local registrars, and has placed that information on its website. (July 12, 2006, Hr'g Tr.)

After the Court issued its July 14, 2006, Order, however, the State Election Board discontinued its voter education efforts with respect to the 2006 Photo ID Act. (Sept. 14, 2006, Hr' g Tr.)

According to counsel for the State Defendants, the State Election Board did not wish to violate the Court's July 14, 2006, Order. (id.) Further, counsel for the State Defendants represented that counsel for Plaintiffs contacted counsel for the State Defendants to warn counsel that counsel for Plaintiffs would bring the matter before the Court again if the State Election Board continued its voter education efforts with respect to the 2006 Photo ID Act. (Id.)

After the Court entered its July 14, 2006, Order, Mr. McIver continued to work with representatives from the Department of Drivers Services ("DDS") to attempt to obtain a list of registered Georgia voters who lacked either a Georgia driver's license or a Georgia Photo ID card. (Sept. 14, 2006, Hr'g Tr. & Pls.' Ex. 2.) The DDS eventually returned a list of 106,522 Georgia voters who purportedly lacked a Georgia driver's license or Georgia Photo ID card, and approximately 198,000 other voters who had previously had a Georgia driver's license that either had been canceled, revoked, suspended, or declared invalid. (Pls.' Ex. 2.)

On September 1, 2006, the State Election Board held a meeting that addressed, among other things, voter education efforts for the 2006 Photo ID Act. (Sept. 14, 2006, Hr'g Tr.) The State Election Board approved a letter to be mailed to approximately 305,000 voters listed on the DDS match report. (Sept. 14, 2006, Hr'g Tr. & Pls.' Ex. 1.) On September 13, 2006, the State Election Board began to mail that letter directly to those 305,000 voters, mailing 30,000 letters each day. (Sept. 14, 2006, Hr'g Tr.) On or about September 13, 2006, the Elections Division of the Secretary of State's Office sent a memorandum to county registrars that attached the letter mailed to the voters and that requested that the registrars also distribute the letter. (Id. & Defs' Ex. 6).

The State Election Board also adopted a voter education program for the 2006 Photo ID Act. (Sept. 14, 2006, Hr' g Tr. & Defs.' Ex. 4.) The plan calls for the State Election Board to distribute the letter mailed to voters to counties, local civic groups, churches, and other interested groups for further distribution. (Defs.' Ex. 4.) The plan also called for the State Election Board to resume running the PPSAs, and to develop an e-mail list to distribute the letter mailed to voters. (Id.) The plan also calls for the State Election Board to provide the list of voters who purportedly lack Georgia driver's licenses or Georgia Photo ID cards to local political parties and candidates, and to telephone the individuals on the list. (Id.) Finally, the plan calls for the State Election Board to produce a brochure concerning the 2006 Photo ID Act's requirements, for distribution through the Elections Division of the Secretary of State's Office. (Id. & Sept. 14, 2006, Hr'g Tr.)

The State Election Board placed information concerning the 2006 Photo ID Act's requirements on the Secretary of State's website, and individuals who visit that website can access information through a link. (Sept. 14, 2006, Hr'g Tr.) Although the State Election Board developed a list of organizations to which it planned to distribute the letter to be mailed to voters and the letter that it planned to distribute at the polls in July 2006, it had not distributed the letters to those organizations as of September 14, 2006. (Id. & Defs.' Ex. 5.) Further, the State Election Board found that it lacked sufficient funding to telephone each of the approximately 305,000

Georgia voters who purportedly lack a Georgia driver's license or Georgia Photo ID card. (Sept. 14, 2006, Hr'g Tr.) The State Elections Board has approved the brochure to be distributed by the Elections Division of the Secretary of State's Office; however, that brochure had not been distributed as of September 14, 2006 (Id.)

On September 5, 2006, the PPSAs resumed running on television stations. (Sept. 14, 2006, Hr'g Tr.) On September 6, 2006, the PPSAs began to run again on radio stations. (Id.) The PPSAs are running on the same radio stations on which the PPSAs previously ran before the July 2006 primary elections. (Id.) The 2006 Photo ID Act also has been the subject of numerous newspaper articles and television news reports. (Id.)

Twiggs County, Georgia, held its special election on September 12, 2006. (Sept. 14, 2006, Hr'g Tr.) At least twenty other counties have special elections scheduled for September 19, 2006. (Sept. 14, 2006, Hr'g Tr. & Pls.' Ex. 4.) Further, at least nine municipalities have special elections scheduled for September 19, 2006. (Sept. 14, 2006, Hr' g Tr. & Pls.' Ex. 4.) Early voting for the September 19, 2006, elections was scheduled to occur from September 11, 2006, through September 15, 2006. (Sept. 14, 2006, Hr'g Tr. & Pls.' Ex. 4.)

As of 5:00 p.m. on September 13, 2006, the State of Georgia had issued 953 Voter ID cards. (Sept. 14, 2006, Hr'g Tr.) To date, Mr. McIver is aware of no complaints of in-person voter fraud purportedly occurring during the July 2006 primary elections and the associated run-off elections. (Id.)

III. Discussion

A. Standard for Obtaining a Preliminary Injunction

To obtain a preliminary injunction, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the preliminary injunction is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. *McDonald's Corp. v. Robertson*, 147 F. 3d 1301, 1306 (11th Cir. 1998). In the Eleventh Circuit, "`[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to the four requisites." *Id.* (quoting *All Care Nursing Serv. Inc. v. Bethesda Mem'l Hosp. Inc.*, 887 F.2d 1535, 1537 (11th Cir. 1989)) (internal quotation marks omitted) (alterations in original). A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. "` [P]reliminary injunctions of legislative enactments--because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits-must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts."' *Bankwest Inc. v. Baker*, 324 F. Supp. 2d 1333, 1343 (N.D. Ga. 2004) (quoting *Ne. Fla. Chapter of the Assn of Gen. Contractors of Am. v. City of Jacksonville*, 896 F. 2d 1283, 1285 (11th Cir. 1990)).

B. Substantial Likelihood of Success on the Merits

1. Equal Protection Claim: Undue Burden

The Supreme Court has made it clear that voting is a fundamental right, *Burdick v. Takushi*, 504 U.S. 428, 433 (1992), under the Fourteenth Amendment in the context of equal protection, *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 629 (1969). Indeed, in *Wesberry v. Sanders*, 376 U.S. 1 (1964), the Court observed :

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

376 U.S. at 17-18. Similarly, in *Reynolds v. Sims*, 337 U.S. 533 (1964), the Court stated:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

337 U.S. at 561-62.

"[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). The equal right to vote, however, is not absolute. *Id.* Instead, states can impose voter qualifications and can regulate access to voting in other ways. *Id.* Under the United States Constitution, states may establish the time, place, and manner of holding elections for Senators and Representatives. U.S. Const. art. I, § 4, cl. 1. Those qualifications and access regulations, however, cannot unduly burden or abridge the right to vote. *Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986) ("[T]he power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote.") (citing *Wesberrv*, 376 U.S. 1); *see also Dunn*, 405 U.S. at 359-60 (striking down Tennessee's durational residency voting requirement of one year in state and three months in county); *Beare v. Briscoe*, 498 F.2d 244, 247-48 (5th Cir. 1974) (invalidating provisions of Texas Constitution and implementing statute requiring persons who wished to vote in any given year to register each year during registration period beginning on October 1 and ending on January 31 of following year) (per curiam). In particular, the Supreme Court has observed that wealth or the ability to pay a fee is not a valid qualification for voting. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666-68 (1966) (citations omitted; footnote omitted).

A number of Supreme Court cases have set forth standards for determining whether a state statute or regulation concerning voting violates the Equal Protect ion clause. In *Dunn*, the Supreme

Court stated that a court must examine: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn*, 405 U.S. at 335. Another Supreme Court case indicates that the Court should "'consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.'" *Kramer*, 395 U.S. at 626. Those cases apply strict scrutiny when examining state statutes or regulations that limit the right to vote. *Id.* at 627 ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."); *see also Hill v. Stone*, 421 U.S. 289, 298 (1975) ("in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification").

In a more recent line of cases, the Supreme Court has not necessarily applied the strict scrutiny test automatically to regulations that relate to voting. *Burdick*, 504 U.S. at 433-34; *Tashjian*, 479 U.S at 213 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Indeed, the Supreme Court observed in *Burdick*:

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting

process itself, inevitably affects-at least to some degree-- the individual's right to vote and his right to associate with others for political ends. Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. Accordingly, the mere fact that a State's system "creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny."

Instead, . . . a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate "against" the precise interests put forward by the State as justifications for the burden imposed by its rule, "taking into consideration" the extent to which those interests make it necessary to burden the plaintiff's rights."

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those

> rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth
>
> Amendment rights of voters, "the State's most important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 433-34 (citations omitted).

Once again, the Court finds that the appropriate standard of review for evaluating the 2006 Photo ID Act is the Burdick sliding scale standard. Under that standard, the Court must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights," *Burdick,* 504 U.S. at 433-34.

a. The Asserted Injury

For the reasons discussed below, the character and magnitude of the asserted injury to the right to vote is significant. Many voters who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a voter registrar's office or DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain Voter ID cards or Georgia Photo ID cards, or cannot travel to a registrar's office or a DDS service center during those locations' usual hours of operation because the voters do not have transportation available. The evidence in the record demonstrates that many voters who lack an acceptable Photo ID for in person voting are elderly, infirm, or poor, and lack reliable transportation to a county registrar's office. For those voters, requiring them to obtain a Georgia Photo ID card or Voter ID card in the short period of time before the September 2006 special elections is unduly burdensome. Indeed, those voters likely cannot obtain a Photo ID or Voter ID card before the September 2006 special elections, resulting in their complete inability to vote in those elections.

In any event, even if registrars' offices or DDS service centers have extended hours, those extended hours will be of little help to voters who must obtain a Photo ID before the September 2006 special elections and the corresponding primary run-off elections. Although the rules and regulations accompanying the 2006 Photo ID Act went into effect prior to the July 18, 2006, primary election, and the State began using PPSAs to notify or educate voters affected by the 2006 Photo ID Act about the availability of Voter ID cards at registrars' offices and the requirement to obtain a Photo I D prior to the July 18, 2006, primary elections, the State stopped all of its educational efforts concerning the 2006 Photo ID Act shortly after the Court issued its July 14, 2006, Order. The State waited until September 1, 2006 to decide to resume its educational efforts with respect to the 2006 Photo

ID Act, and did not begin running its PPSAs again until at least September 5, 2006. Further, although the State has taken the commendable step of attempting to notify each Georgia voter who purportedly lacks a Georgia driver's license or Georgia Photo ID card of the 2006 Photo ID Act's requirements, the State did not begin to mail the letters announcing those requirements to those voters until September 13, 2006--less than one week before the September 19, 2006, special elections. It therefore is highly likely that a large number of Georgia voters who lack Photo IDs will not know of the 2006 Photo ID Act's requirements or the availability of a free Voter ID card until after the September 2006 special elections, and will not know of those requirements sufficiently in advance of the special elections to allow those voters to obtain the necessary Voter ID card or Photo ID card.

Although the State Election Board developed a letter for voters that explains the 2006 Photo ID Act and the availability of Voter ID cards, the State Election Board made no arrangements to distribute that letter to voters who purportedly lacked Photo ID prior to the July 18, 2006, primary elections. Instead, the State Election Board planned to distribute the letter when the voters appeared to vote in person during the July 18, 2006, primary elections or during the related advance voting. The Court concluded in its July 14, 2006, Order that such method was not reasonably calculated to reach the voters who are most likely to lack a Photo ID, many of whom might not appear at the polls or the registrar's office during those times. The letter available during the July 18, 2006, primary elections thus was not reasonably calculated to advise voters of the Photo ID requirements.

Given the limited voter education efforts undertaken by the State prior to the July 18, 2006, primary elections, the State's decision to cease its voter education efforts after the Court's July 14, 2006, Order, and the short period of time between the State's decision to resume its voter education efforts and the September 2006 special elections, the fact that relatively few Georgia voters have obtained Voter ID cards to date certainly is not an indication that few Georgia voters lack Photo ID or that those Georgia voters who lack Photo ID are generally uninterested in voting in-person. Instead, those voters likely have not had sufficient time to become aware of the 2006 Photo ID Act's Photo ID requirements and to arrange to travel to a registrar's office and obtain a Voter ID card. As Mr. McIver testified at the July 12, 2006, hearing, the number of Voter ID cards issued increased daily after the State Election Board began airing its PPSAs. This testimony indicates that voters who lack Photo ID very well may avail themselves of the Voter ID card option once the State has had sufficient time to reach those voters and the voters have had sufficient time to make arrangements to travel to their respective registrars' offices and obtain the cards.

Even if the State had made a more significant effort to educate voters about the Photo ID requirement and to publicize the availability of Voter ID cards, requiring voters to obtain a Photo ID within the few days remaining before the September 2006 special elections still is unduly burdensome. The State has provided only one piece of equipment for issuing Voter ID cards to each county, regardless of population size. Voters who actually receive the letter mailed by the State Election Board would have only a matter of days prior to the September 2006 special elect ions to obtain Voter ID cards, and only one, or, for counties that have purchased additional equipment, perhaps two or three locations to obtain the cards. Many voters who are elderly, disabled, or have certain physical or mental problems simply cannot navigate that process or any long waits successfully.[6]

Further, some of the registrar's offices, particularly in large Georgia counties, may be a lengthy drive away from many of the citizens those registrar's offices service. Most of the registrar's offices are located in largely rural areas where mass transit likely is not available, and registered voters who have no driver's licenses or access to automobiles simply may not be able to obtain transportation to a registrar's office prior to the September 2006 special elections.[7]

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[6] Going to a DDS service center to obtain a Georgia Photo ID card would also be burdensome for those voters. As the Court noted in its October 18, 2005, order, many voters might have difficulty obtaining a Georgia Photo ID card from a DDS service center because Georgia has relatively few such centers, and the centers usually have lengthy lines. (Order of Oct. 12, 2005.)

[7] The Court noted in its October 18, 2005, Order that many voters who resided in rural areas similarly would have severe difficulty in traveling to a DDS service center to obtain a Photo ID card . (Order of

Oct. 18, 2005.) Defendants previously argued that the 2006 Photo ID Act does not deprive voters of the right to vote, as voters can vote via mail-in absentee ballot without producing any Photo ID at all in most instances. For the same reasons as stated in the Court's October 18, 2005, and July 14, 2006, orders, the Court finds that absentee balloting is not a viable, reasonable alternative to in-person voting for the September 2006 special elections. (Order of Oct. 18, 2005; Order of July 14, 2006.) The Court incorporates its analysis of

The right to vote is a delicate franchise. As the Court observed in its October 18, 2005, Order, a previous Plaintiff in the case, Plaintiff Tony Watkins, declined to pursue his claim concerning the 2005 Photo ID Act when he was informed that Defendants planned to depose him. (Order of Oct. 18, 2005.) Given the fragile nature of the right to vote, and the restrictions discussed above, the Court finds that the 2006 Photo ID Act imposes "severe" restrictions on the right to vote with respect to the September 2006 special elections. In particular, the 2006 Photo ID Act's Photo ID requirement makes the exercise of the fundamental right to vote extremely difficult for the September 2006 special elections for voters currently without acceptable forms of Photo ID for whom obtaining a Photo ID or a Voter ID card would be a hardship. Unfortunately, the 2006 Photo ID Act's Photo ID requirement is most likely to prevent Georgia's elderly, poor, and African-American voters from voting in the September 2006 special elections. The Court again observes that for those citizens, the character and magnitude of their injury--the loss of their right to vote--is undeniably demoralizing and extreme, as

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the absentee voting process contained in those Orders into this Order, and does not repeat that discussion here. Defendants also previously argued that voters who lacked a Photo ID would not be turned away from the polls\, because those voters could vote a provisional ballot and return in two days with a Photo ID. As discussed in the Court's October 18, 2005, and July 14, 2006, Orders, the Court finds that the ability to vote a provisional ballot does not relieve the voters of the undue burden that the 2006 Photo ID Act's requirement poses for the September 2006 special elections. (Order of Oct. 18, 2005; Order of July 14, 2006.) The Court incorporates the portions of those Orders discussing the provisional ballot argument into this Order, and does not repeat that analysis here.

those citizens are likely to have no other realistic or effective means of protecting their rights.

b. State Interest

The State and the State Defendants assert that the 2006 Photo ID Act's Photo ID requirement is designed to curb voting fraud. Undoubtedly, this interest is an important one. The Court therefore proceeds to the third portion of its inquiry.

c. Extent to Which the State's Interest In Preventing Voter Fraud Makes It Necessary to Burden the Right to Vote

Finally, the Court must examine the extent to which the State's interest in preventing voter fraud makes it necessary to burden the right to vote. For the reasons stated in the Court's July 14, 2006, Order, the Court finds at this point that the 2006 Photo ID Act's Photo ID requirement is not narrowly tailored to the State's proffered interest of preventing voter fraud. (Order of July 14, 2006.)

d. Summary

The Court finds that significantly less burdensome alternatives exist to address the State's interest other than requiring voters to obtain Photo IDs prior to the September 2006 special elections. As noted above, the burden on the affected voters to obtain a Photo ID in the short period prior to the September 2006 special elections is severe. Under those circumstances, the State Defendants' proffered interest does not justify the severe burden that the 2006 Photo ID Act's Photo ID requirement places on the right to vote with respect to the September 2006 special elections. For those reasons, the Court concludes that the Photo ID requirement fails the *Burdick* test with respect to the September 2006 special elections.

As the Court observed in its July 14, 2006, Order, the State's attempt to make obtaining a Photo ID easier by allowing voters to avoid the DDS service centers is admirable, as is the State's attempt to avoid imposing a poll tax by making Voter I D cards available to voters without a fee. (Order of July 14, 2006.) As the Court also observed during the September 14, 2006, hearing, the State's efforts to mail letters to potentially affected voters and the State's renewed efforts to educate voters also are admirable. (Sept. 14, 2006, Hr'g Tr.) Unfortunately, the State's attempt to educate voters did not resume sufficiently in advance of the September 2006 special elections to relieve the undue burden that the 2006 Photo ID Act places on voters who lack Photo ID for those elections. Under those circumstances, the State has failed to allow sufficient time to educate its voters prior to the September 2006 special elections, and has not taken into consideration the hardships that requiring voters to obtain a Voter ID card or Photo ID card within such a short time frame will place on many of the voters affected by the 2006 Photo ID Act.

Let the Court be perfectly clear: the Court does not intend to imply that all Photo ID requirements would be invalid or overly burdensome on voters, or that a Photo ID law could never satisfy federal constitutional requirements. Indeed, as the Court previously noted, if the State allows sufficient time for its education efforts with respect to the 2006 Photo ID Act and if the State undertakes sufficient steps to inform voters of the 2006 Photo ID

Act's requirements before the November 2006 general elections and corresponding run-offs, 2006 Photo ID Act might well survive a federal constitutional challenge for those future elections. The 2006 Photo ID Act, however, fails the federal constitutional test with respect to the September 2006 special elections. Accepting that preventing voter fraud is a legitimate and important State concern, significantly less burdensome alternatives exist to address the State's interest in preventing voter fraud for the September 2006 special elections. For those reasons, the Court finds that Plaintiffs have a substantial likelihood of succeeding on their claim that the 2006 Photo ID Act violates the Equal Protection Clause because it imposes an undue burden on the right to vote with respect to the September 2006 special elections.

As the Court noted at the conclusion of the September 14, 2006, hearing, the Court does not intend to prohibit the State from continuing its voter education efforts with respect to the 2006 Photo ID Act. Given the Court's observations stated above, it is quite possible that the State can undertake sufficient educational efforts prior to the November 2006 general elections to satisfy federal constitutional requirements and to avoid making the Photo ID requirement unduly burdensome for voters. Given the importance of such educational efforts to an ultimate determination of whether the 2006 Photo ID Act is constitutional, the Court will not enjoin the State from pursuing such efforts.

2. Poll Tax

Plaintiffs previously argued that the 2006 Photo ID Act was a constructive poll tax. To the extent that Plaintiffs reassert that arguments with respect to the September 2006 special elections, the Court rejects the argument for the reasons set forth in its July 14, 2006, Order. (Order of July 14, 2006.) The Court incorporates the portion of the July 14, 2006, Order that addressed Plaintiffs' poll tax claim into this Order, and does not repeat that analysis here.

3. Civil Rights Act of 1964

Plaintiffs previously contended that the 2006 Photo ID Act's Photo ID requirement violated the Civil Rights Act of 1964, 42 U.S.C.A. § 1971, by applying different standards to absentee and in-person voters within the same county and by precluding voting due to an omission that is not material to the right to vote under Georgia law. To the extent that Plaintiffs raise that contention again with respect to the September 2006 special elections, the Court rejects the contention for the same reasons as set forth in the Court's July 14, 2006, Order. (Order of July 14, 2006.) The Court incorporates the portion of its July 14, 2006, Order that addressed Plaintiffs' arguments with respect to that claim into this Order, and does not repeat that analysis here.

Further, Plaintiffs previously argued that the 2006 Photo ID Act's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(B), which prohibits a person acting under color of law from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." To the extent that Plaintiffs raise that argument with respect to the September 2006 special elections, the Court rejects the argument for the reasons set forth in its July 14, 2006, Order. (Order of July 14, 2006.) The Court incorporates the analysis of the argument contained in the July 14, 2006, Order, instead of repeating that analysis here.

4. Voting Rights Act Claim

Finally, Plaintiffs assert a claim that the 2006 Photo ID Act's Photo ID requirement violates Section 2 of the Voting Rights Act, 42 U.S.C.A. § 1973 (a). The Court does not address that claim in this Order, as Plaintiffs did not address this claim in their brief in support of their Second Motion for Preliminary Injunction or in their arguments presented during the September 14, 2006, hearing. (Sept. 14, 2006, Hr'g Tr.)

B. Irreparable Harm

For the reasons discussed supra Part III.B., the 2006 Photo ID Act s Photo ID requirement unduly burdens the fundamental right to vote with respect to the September 2006 special elections, and likely will cause a number of Georgia voters to be unable to cast a vote and to have their votes counted in those elections.[8] Plaintiffs consequently have demonstrated that they or their constituents will suffer irreparable harm if the Court declines to enter a preliminary injunction with respect to the

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[8] To the extent that Defendants argue that the 2006 Photo ID Act wilt not deprive a single Georgia voter of the right to vote, because voters without Photo ID can vote absentee ballots, the Court rejects that argument as to the September 2006 special elections for the same reasons as stated in the July 14, 2006, Order. (Order of July 14, 2006.)

September 2006 special elections. This factor therefore weighs in favor of granting Plaintiffs' Motion for Preliminary Injunction.

C. Threatened Injury to Plaintiffs Weighed Against the Damage to the State Caused by a Preliminary Injunction.

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a preliminary injunction.[9] Given that the right to vote is a fundamental right and is preservative of all other rights, denying an individual the right to vote works a serious, irreparable injury upon that individual. Considering the right at issue and the likely injury caused by not entering a preliminary injunction, the potential injury to Plaintiffs outweighs the harm to the State and Defendants caused by entering a preliminary injunction for the September 2006 special elections. Further, as the Court observed during the September 14, 2006, hearing, the Court is not enjoining the elections that are already in process by issuing this Order. (Sept. 14, 2006, Hr'g Tr.) Instead, the Court simply is precluding the State from requiring that voters present a Photo ID for the September 2006 special elections. The elections still may proceed. For those reasons, this factor counsels in favor of entering a preliminary injunction.

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[9] To the extent that Defendants argue that the entry of a preliminary injunction likely will result in confusion for voters, poll workers, and elections officials, and may result in an inconsistent application of the identification requirements, or that the evidence indicates that local elections officials lack sufficient time to conduct training for poll workers and to educate the public, the Court rejects those arguments for the reasons stated in the October 12, 2005, and July 14, 2006, Orders. (Order of Oct. 12, 2005; Order of July 14, 2006.)

D. Public Interest

Finally, the Court must determine whether issuing a preliminary injunction will serve the public interest. Preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes counted in any given election. As discussed supra Part III. B., however, the 2006 Photo ID Act's Photo ID requirement, like its 2005 predecessor, unduly burdens the right of many properly registered Georgia voters to vote in the September 2006 special elections, and has the likely effect of causing many of those voters to forego voting, or of precluding those voters from voting at the polls. Because the right to vote is a fundamental right, removing the undue burdens on that right imposed by the 2006 Photo ID Act's Photo ID requirement serves the public interest. This factor therefore counsels in favor of granting Plaintiffs' Motion for Preliminary Injunction.

E. Summary

In sum, the four factors for granting a preliminary injunction weigh in favor of Plaintiffs. In particular, Plaintiffs have a substantial likelihood of success on the merits of their claim that the 2006 Photo ID Act's Photo ID requirement unduly burdens the right to vote, at least with respect to the September 2006 special elections. Plaintiffs and their constituents also will suffer irreparable harm if the Court does not grant a preliminary injunction with respect to those elections, and the threatened harm to Plaintiffs outweighs the injury to Defendants and the State that will result from issuing a preliminary injunction. Finally, entering a preliminary injunction for the September 2006 special elections serves the public interest. For those reasons, the Court grants Plaintiffs' Second Motion for Preliminary Injunction with respect to the September 2006 special elections.

IV. Conclusion

ACCORDINGLY, the Court GRANTS Plaintiffs' Motion for Hearing on Plaintiffs' Second Motion for Preliminary Injunction in Advance of the September Special Elections [137], and ENJOINS and restricts Defendants individually and in their official capacities from enforcing or applying the 2006 Photo ID Act, which requires voters to present a Photo ID as a pre-condition to in-person voting in Georgia, to deny Plaintiffs or any other registered voter in Georgia admission to the polls, a ballot, or the right to cast their ballots and to have their ballots counted because of their failure or refusal to present a Photo ID with respect to the September 2006 special elections. For the reasons stated in the body of this Order, the Court will not enjoin Defendants from continuing their voter education efforts with respect to the 2006 Photo ID Act for the November 2006 general elections and corresponding run-off elections. The Court anticipates revisiting this matter prior to the November 2006 general elections.

IT IS SO ORDERED, this the 15th day of September, 2006.

Harold L. Murphy
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Case No. CIVA 4:05CV0201 HLM
September 06, 2007

COMMON CAUSE/GEORGIA, ET AL.,
PLAINTIFFS,

V.

EVON BILLUPS, ET AL.,
DEFENDANTS.

ORDER

HAROLD L. MURPHY, District Judge.

This case is an action to have the photo identification ("Photo ID") requirement set forth in Senate Bill 84 ("The 2006 Photo ID Act") declared unconstitutional both on its face and as applied, and to enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)). The case came before the Court on August 22 through August 24, 2007, for a bench trial on Plaintiffs' request for a permanent injunction. This Order first sets forth the procedural background for the case, and then sets forth the

Court's findings of fact and conclusions of law from the bench trial.

At the outset, the Court commends counsel on both sides of this case for their courteousness and professionalism. Counsel worked diligently to prepare this case for trial within a very short time frame, and managed to complete discovery in an equally short time frame with only minimal intervention by the Court. Counsel's preparation, diligence, competence, and professionalism all made the litigation of this case much easier for the Court and the parties.

I. Procedural Background

1. On September 1, 2005, Plaintiffs filed this lawsuit. (Docket Entry No. 1.) Plaintiffs initially asserted that the Photo ID requirement in the 2005 Amendment to O.C.G.A. § 21-2-417 (Act. No. 53) ("The 2005 Photo ID Act") violated the federal and Georgia constitutions, was a poll tax that violated the Twenty-Fourth Amendment and the Equal Protection Clause, unduly burdened the fundamental right to vote, violated the Civil Rights Act of 1964, and violated Section 2 of the Voting Rights Act of 1965.

2. On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing.

3. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

4. On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction.

5. On October 7, 2005, former Secretary of State Cathy Cox and the State Election Board (the "State

Defendants") filed a Motion to Dismiss Individual Capacity Claims.

6. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims.

7. On October 12, 2005, Plaintiffs filed their First Amendment to Complaint, which addressed the issue of standing for the organizational Plaintiffs.

8. On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. (Oct. 12, 2005, Hr'g Tr.) During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions. (*Id.*)

9. On October 18, 2005, the Court entered an Order granting Plaintiffs' Motion for Preliminary Injunction and finding that Plaintiffs had a substantial likelihood of success on their claims that the 2005 Photo ID Act unduly burdened the right to vote, and that the 2005 Photo ID Act constituted a poll tax. (Order of Oct. 18, 2005.)

10. On October 19, 2005, the Court denied the State Defendants' Motion to Dismiss Individual Capacity Claims. (Order of Oct. 19, 2005.)

11. On October 20, 2005, the Court denied the State Defendants' Motion to Stay Preliminary Injunction Pending Appeal. (Order of Oct. 20, 2005.)

12. The State Defendants appealed the October 18, 2005, Order to the United States Court of Appeals for the Eleventh Circuit, requesting that the Eleventh Circuit stay the Court's October 18, 2005, Order pending resolution of the appeal.

13. On October 27, 2005, the Eleventh Circuit denied the State Defendants' Motion to Stay the October 18, 2005, Order pending resolution of the appeal.

14. In January 2006, the Georgia General Assembly passed the 2006 Photo ID Act, which Governor Purdue signed into law.

15. On February 23, 2006, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. In that Motion, Plaintiffs sought permission to amend their First Amended to Complaint to assert claims that both the 2005 Photo ID Act and the 2006 Photo ID Act violated the Georgia Constitution, the federal Equal Protection Clause, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964, and Section 2 of the Voting Rights Act of 1965.

16. On March 2, 2006, the Court held a telephone conference with counsel to discuss the issues relating to preclearance of the 2006 Photo ID Act by the United States Department of Justice ("DOJ"). The Court stayed the proceedings in this case pending notification of the DOJ's decision concerning preclearance of the 2006 Photo ID Act. (Order of Mar. 2, 2006.)

17. On April 21, 2006, former Secretary of State Cox filed a Notice of Section 5 Preclearance of Act 432 (SB 84).

18. On that same day, the Court entered an Order lifting the stay in this case, and setting forth a briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction. (Order of Apr. 21, 2006.)

19. On April 26, 2006, Plaintiffs filed their Second Amended Complaint.

20. On May 5, 2006, Plaintiffs filed a Motion to Revise Scheduling Order of April 21, 2006, pending the State Election Board's adoption of rules and regulations implementing the 2006 Photo ID Act, and pending DOJ preclearance of those rules and regulations.

21. On that same day, the Court approved a Consent Order revising the briefing schedule for Plaintiffs' Second Motion for Preliminary Injunction to require Plaintiffs to file that Motion within ten days after the rules and regulations adopted by the State Election Board received preclearance from the DOJ. (Order of May 5, 2006.)

22. On May 10, 2006, former Secretary of State Cox and the State Election Board filed a Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief in Part.

23. On May 25, 2006, Plaintiffs filed a Second Motion for Order to Certify Questions of State Law to the Georgia Supreme Court.

24. On June 29, 2006, the Court entered an Order granting the Motion to Dismiss Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief in Part, dismissing Counts One and Three of Plaintiffs' Second Amended Complaint, as well as the portions of Counts Two, Five, and Six of Plaintiffs' Second Amended Complaint that challenged the 2005 Photo ID Act. (Order of June 29, 2006.) In that same Order, the Court denied Plaintiffs' Second Motion for Order to Certify Questions of State Law to the Georgia Supreme Court. (*Id.*)

25. After the Court's June 29, 2006, Order, the following claims asserted in Plaintiffs' Second Amended Complaint remained pending. In Count Two of their Second Amended Complaint, Plaintiffs contended that the Photo ID requirement imposes an undue burden on the right to vote, in violation of the Equal Protection Clause. (Second Am. Compl. ¶¶ 89-91.) In Count Four of their Second Amended Complaint, Plaintiffs asserted that the 2006 Photo ID Act is an unconstitutional poll tax if it is

construed or applied to require voters to pay a fee for a birth certificate or other documents to obtain a Georgia voter Photo ID card. (*Id.* ¶¶ 96-97.) In Count Five of their Second Amended Complaint, Plaintiffs alleged that the Photo ID requirement violates the Civil Right Act of 1964, as set forth in 42 U.S.C.A. §§ 1971(a)(2)(A) and 1971(a)(2)(B). (*Id.* ¶¶ 98-102.) Finally, in Count Six of their Second Amended Complaint, Plaintiffs asserted that the Photo ID requirement violates Section 2 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973(a). (*Id.* ¶¶ 103-106.)

26. On July 5, 2006, Plaintiffs filed their Second Motion for Preliminary Injunction. Plaintiffs sought to have the 2006 Photo ID Act declared invalid, both on its face and as applied, and to enjoin its enforcement. Plaintiffs contended that the 2006 Photo ID Act imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article II, section I, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the United States Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. §§ 1971(a)(2)(A) and (a)(2)(B)), Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)), and 42 U.S.C.A. §§ 1983 and 1988. Plaintiffs requested that the Court enter a preliminary injunction that prohibits Defendants from: (1) enforcing or attempting to enforce or apply the 2006 Photo ID Act and the regulations issued by the State Election Board under that Act at any elections in Georgia; or (2) discouraging, interfering with, or preventing any person who is lawfully registered from voting in person in any such elections, pending a final trial on the merits or a

further Order from the Court. Plaintiffs requested that the Court enjoin Defendants "and [that] all state or local election officials be further enjoined from making any public announcement or statements or other communications that advise registered voters or election officials in Georgia that registered voters may not cast a ballot in any election if the voter does not have one of the forms of photo identification specified in the 2006 Photo ID Act." (Pls.' Mot. Second Prelim. Inj. at 2.) Plaintiffs also asked the Court to order and direct Defendants "to send prompt written notice to each of the 675,000 registered voters who have been identified by the Secretary of State as not having Georgia driver's licenses, informing them that they are not required to present photographic identification as a condition to being admitted to the polls or allowed to vote and that they will not be discouraged, interfered with, or otherwise prevented from voting in person by defendants or other election officials on the ground that they are unable to present photographic identification to election officials at the polls." (*Id.* at 2-3.)

27. On July 7, 2006, the State Election Board filed a Motion to Dismiss Plaintiffs' Second Motion for Preliminary Injunction and to Cancel Hearing. That Motion to Dismiss followed a temporary restraining order issued by the Superior Court of Fulton County, Georgia, on July 7, 2006, enjoining the defendants in that case from enforcing the 2006 Photo ID Act during the July 18, 2006, primary election or any resulting run-off election. *Lake v. Perdue,* Civil Action File No.2006CV119207, slip op. at 3-4 (Fulton County Super. Ct. July 7, 2006.) The plaintiffs in *Lake* had argued that the 2006 Photo ID Act violated the Georgia Constitution.

28. On July 10, 2006, following a telephone conference with counsel, the Court entered an Order indicating that the Court would postpone the July 12, 2006, preliminary injunction hearing in this case if the Supreme Court of Georgia entered an Order denying the *Lake* defendants' request to stay the temporary restraining order in that case prior to July 12, 2006. (Order of July 12, 2006.)

29. On July 12, 2006, the Court held a hearing concerning Plaintiffs' Second Motion for Preliminary Injunction. (July 12, 2006, Hr'g Tr.) Near the conclusion of the hearing, counsel received information that the Georgia Supreme Court had denied the *Lake* defendants' request to stay the temporary restraining order in that case, leaving the temporary restraining order in place for at least thirty days. (*Id.*)

30. At the conclusion of the July 12, 2006, hearing, the Court orally granted Plaintiffs' Second Motion for Preliminary Injunction with respect to Plaintiffs' claim under the Equal Protection Clause. (July 12, 2006, Hr'g Tr.) On July 14, 2006, the Court entered a written Order that formally set forth the Court's findings and conclusions concerning Plaintiffs' Second Motion for Preliminary Injunction. (Order of July 14, 2006.) The Court granted Plaintiffs' Second Motion for Preliminary Injunction solely with respect to the July 2006 primary elections and associated run-offs, reasoning that 2006 Photo ID Act posed an undue burden on certain voters with respect to those elections. (*Id.*) The Court declined to extend the preliminary injunction to cover subsequent elections, reasoning that if the State Defendants continued their education efforts with respect to the 2006 Photo ID Act, the requirements

of that Act might no longer prove unduly burdensome for voters in subsequent elections. (*Id.*)

31. After the Court's July 14, 2006, Order, and after the Georgia Supreme Court's refusal to stay the temporary restraining order issued in the *Lake* case, the State Defendants stopped all of their attempts to educate voters concerning the 2006 Photo ID Act. In early September 2006, the State Election Board voted to resume those educational efforts.

32. On September 5, 2006, the Court held a telephone conference with the parties to address Plaintiffs' concerns with respect to the educational efforts and the application of the 2006 Photo ID Act to the September 2006 special elections.

33. On September 6, 2006, Plaintiffs filed their Motion for Hearing on Plaintiffs' Second Motion for Preliminary Injunction in Advance of the September 2006 special elections.

34. On September 14, 2006, the Court held its third preliminary injunction hearing in this case. (Sept. 14, 2006, Hr'g Tr.) At the conclusion of the September 14, 2006, hearing, the Court verbally granted Plaintiffs' request for a preliminary injunction with respect to the September 2006 special elections. (*Id.*)

35. On September 26, 2006, the State Defendants filed a Motion to Stay Proceedings Pending Resolution of Appeal of the Superior Court of Fulton County's Declaratory Judgment and Permanent Injunction to the Georgia Supreme Court. (Docket Entry No. 144.) On September 28, 2006, the Court granted that Motion. (Order of Sept. 28, 2006.)

36. On June 11, 2007, the Georgia Supreme Court issued its decision in *Perdue v. Lake*, 647 S.E.2d 6 (Ga.2007). In that decision, the Georgia Supreme

Court concluded that the plaintiff in *Lake* lacked standing because she possessed a MARTA card that was acceptable for in-person voting under the 2006 Photo ID Act, and vacated the Fulton County Superior Court's determination that the 2006 Photo ID Act violated the Georgia Constitution. *Lake,* 647 S.E.2d at 8. On July 27, 2007, the Georgia Supreme Court denied a request for reconsideration by the plaintiff. (Docket Entry No. 151-3.)

37. On July 27, 2007, the State Defendants filed a Motion for Order Lifting Stay of Proceedings and Setting Trial on Merits. (Docket Entry No. 151.) On August 1, 2007, the Court granted that Motion. (Order of Aug. 1, 2007.)

38. On August 2, 2007, the Court entered an Order directing the parties and their counsel to appear before the Court on August 22, 2007, for a final trial on the merits. (Order of Aug. 2, 2007.)

39. On August 13, 2007, Plaintiffs filed a Motion for Leave to Amend to Add Plaintiffs and to Reflect the Substitution of a Defendant. (Docket Entry No. 159.) Plaintiffs sought to amend their Second Amended Complaint to add new individual plaintiffs in light of the Georgia Supreme Court's finding that a MARTA card is an acceptable form of Photo ID for purposes of the 2006 Photo ID Act, the lone individual Plaintiff, Clara Williams, lacked standing to pursue this action because she had a MARTA card. (*Id.*) Plaintiffs also sought to substitute the current Georgia Secretary of State, Karen Handel, for the former Georgia Secretary of State, Cathy Cox. (*Id.*)

40. On August 14, 2007, the State Defendants filed a Motion to Dismiss Plaintiff Clara Williams for Lack of Standing. (Docket Entry No. 166.)

41. On August 16, 2007, counsel for Plaintiffs filed a new lawsuit challenging the 2006 Photo ID Act. *Young v. Billups,* Civil Action File No. 4:07-CV-0163-HLM. Plaintiffs sought to add the named plaintiffs in the *Young* case as individual Plaintiffs in this lawsuit. On August 17, 2007, the *Young* Plaintiffs filed an Emergency Motion to Consolidate the *Young* case with the instant case.

42. On August 17, 2007, the Court entered an Order granting Plaintiffs' Motion for Leave to Amend, and allowed Plaintiffs to add Bertha B. Young and Eugene Taylor as individual Plaintiffs and to substitute current Secretary of State Karen Handel for former Secretary of State Cox. (Order of Aug. 17, 2007.) The Court denied as moot the Emergency Motion to Consolidate the *Young* case with this one. (*Id.*) On that same day, the Court granted the State Defendants' Motion to Dismiss Plaintiff Clara Williams for Lack of Standing, and dismissed Plaintiff Williams from this suit. (*Id.*)

43. On August 22, 2007, the case proceeded to a bench trial. The bench trial concluded on August 24, 2007. During the bench trial, the Court orally granted the State Defendant's Motion for a Directed Verdict, and dismissed six organizational Plaintiffs, including Common Cause/Georgia, the League of Women Voters of Georgia, Inc., The Central Presbyterian Outreach and Advocacy Center, Inc., the Georgia Association of Black Elected Officials, Inc., the Georgia Legislative Black Caucus, and Concerned Black Clergy of Metropolitan Atlanta, Inc., for lack of standing. The Court denied the Motion with respect to Plaintiffs Young and Taylor and Plaintiff NAACP, but indicated that it would reconsider the question of standing after the conclusion of the trial.

44. During the bench trial, Plaintiffs proceeded forward only on their claim that the 2006 Photo ID Act unduly burdens their right to vote, in violation of their equal protection rights. This Order therefore addresses only that claim and the question of standing.

II. Findings of Fact

A. History of the 2006 Photo ID Act

1. Prior to the 1998 elections, voters in Georgia, like registered voters in a majority of other states, were not required to present identification as a condition of voting. In 1997, the Georgia General Assembly adopted O.C.G.A. § 21-2-417, which required registered voters in Georgia to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to the polls and of being allowed to vote. Prior to its amendment in 1997, O.C.G.A. § 21-2-417 permitted, but did not require, registered voters to present a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. Under the version of O.C.G.A. § 21-2-417 as amended in 1997, voters remained free to use any of eight other methods of identification for voting, including a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement showing the voter's name and address. Additionally, voters who did not have, or could not find, one of the seventeen forms of identification specified in former O.C.G.A. § 21-2-417(a), were entitled to be admitted to the polls, to be issued a ballot, and to be allowed to vote

simply by signing a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate.

2. In 2005, the Georgia General Assembly adopted House Bill 244, or Act 53 ("HB 244"), which amended O.C.G.A. § 21-2-417 to require that all registered voters in Georgia who vote in person in all primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, present a government-issued Photo ID to election officials as a condition of being admitted to the polls and before being issued a ballot and being allowed to vote. The Georgia House of Representatives approved the Conference Committee Report on Act 53. Eighty-nine Republicans and two Democrats voted for HB 244, while seventy-two Democrats and three Republicans voted against it. The Georgia Senate adopted the Conference Committee Report on Act 53, with thirty-one Republicans and no Democrats voting in favor of it and eighteen Democrats and two Republicans voting against it. (*Id.*)

3. On April 22, 2005, Governor Sonny Perdue signed HB 244, and the Photo ID requirement of HB 244 became effective on July 1, 2005, subject to preclearance by the United States Department of Justice. The Photo ID requirement of HB 244 was codified in O.C.G.A. § 21-2-417. HB 244 also eliminated the requirement that voters seeking to vote via absentee ballot by mail provide one of several statutory excuses in order to obtain an absentee ballot.

4. In January 2006, a majority of legislators in the Georgia House of Representatives and the Georgia Senate adopted the 2006 Photo ID Act. The 2006 Photo ID Act repealed the 2005 Photo ID

Amendment, replacing it with identical Photo ID requirements for in-person voting and a new code section, O.C.G.A. § 21-2-417.1, which requires the Board of Elections in each county to issue a "Georgia voter identification card" containing a photograph of the voter, without charge to voters residing in the county, upon presentation of certain identifying documents. The 2006 Photo ID Act amended O.C.G.A. § 40-5-103 by striking the previous subsection (d) in the 2005 Photo ID Act, which had required a voter to execute an affidavit of poverty to obtain a Photo ID without charge from the Department of Drivers Services ("DDS"). In its place, the 2006 Act substituted a requirement that the voter swear "that he or she desires an identification card in order to vote ... and that he or she does not have any other form of identification that is acceptable under Code § 21-2-417" and to "produce evidence that he or she is registered to vote in Georgia."

5. On January 9, 2006, the first day of the 2006 legislative session, the House Committee on Governmental Affairs of the Georgia House of Representatives approved SB 84 by a straight party-line vote of seven to three, sending the bill to the floor of the House.

6. On January 24, 2006, the Senate passed SB 84 by a vote of thirty-two to twenty-two, with two members excused. Thirty-two Republicans voted in favor of it, and twenty-one Democrats and one Republican voted against it. On January 25, 2006, the House of Representatives passed SB 84 by a vote of 111 to sixty, with three members excused. Ninety-eight Republicans and thirteen Democrats voted in favor of it, while sixty Democrats voted against it. On January 26, 2006, Georgia's Governor, Sonny

Perdue, signed the Act. The Georgia General Assembly refused to delay the effective date of the 2006 Photo ID Act until after the 2006 primary and general elections. On April 21, 2006, the DOJ precleared the 2006 Photo ID Act.

7. The 2006 Photo ID Act changed O.C.G.A. § 40-5-103(d)(1) to eliminate the affidavit of indigency requirement. That portion of the statute now provides:

> The department shall not be authorized to collect a fee for an identification card from any person:
>
> (1) Who swears under oath that he or she desires an identification card in order to vote in a primary or election in Georgia, and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and
>
> (2) Who produces evidence that he or she is registered to vote in Georgia.
>
> This subsection shall not apply to a person who has been issued a driver's license in this state.

O.C.G.A. § 40-5-103(d).

8. The 2006 Photo ID Act also amended the text of O.C.G.A. § 21-2-417. O.C.G.A. § 21-2-417 currently provides:

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

(1) A Georgia driver's license which was properly issued by the appropriate state agency;

(2) A valid Georgia voter identification card issued under Code Section 21-2-417.1 or other valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector;

(3) A valid United States passport;

(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;

(5) A valid United States military identification card, provided that such

identification card contains a photograph of the elector; or

(6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

(c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-200, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document

> that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

O.C.G.A. § 21-2-417.

9. The 2006 Photo ID Act also added O.C.G.A. § 21-2-417.1, which provides:

> (a) Each county board of registrars shall provide at least one place in the county at which it shall accept applications for and issue Georgia voter identification cards to registered Georgia electors which shall under state law be valid only for purposes of voter identification under Code Section 21-2-417 and available only to registered electors of this state. No fee shall be charged or collected for the application for or issuance of a Georgia voter identification card.

(b) No person shall be eligible for a Georgia voter identification card if such person has a valid unexpired driver's license or identification card issued under Code Section 40-5-100.

(c) The Georgia voter identification card shall be captioned 'GEORGIA VOTER IDENTIFICATION CARD' and shall contain a prominent statement that under Georgia law it is valid only as identification for voting purposes. The Georgia voter identification card shall be laminated, shall contain a digital photograph of the applicant, and shall include the following information:

(1) Full legal name;

(2) Address of residence;

(3) Birth date;

(4) Date identification card was issued;

(5) Sex;

(6) Height;

(7) Weight;

(8) Eye Color;

(9) County where the identification card was issued including a county number to

be assigned for each county by the Secretary of State; and

(10) Such other information or identification as required by rule of the State Election Board.

(d) The application for a Georgia voter identification card shall elicit the information required under subsection (c) of this Code section and such other information as may be required by rule of the State Election Board. The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute a felony offense under Code Section 16-10-71, relating to the offense of false swearing.

(e) The board of registrars shall require presentation and verification of the following information before issuing a Georgia voter identification card to a person:

(1) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth;

(2) Documentation showing the person's date of birth;

(3) Evidence that the person is registered to vote in this state; and

(4) Documentation showing the person's name and address of principal residence.

(f) A Georgia voter identification card shall remain valid so long as a person resides at the same address and remains qualified to vote. It shall be the duty of a person who moves his or her residence within the State of Georgia to surrender his or her card to the board of registrars of the county of his or her residence; and such person may after such surrender apply for and receive a new card if such person is otherwise eligible under this Code section. It shall be the duty of a person who moves his or her residence outside the State of Georgia or who ceases to be qualified to vote to surrender his or her card to the board of registrars by which it was issued.

(g) The State Election Board shall provide each county board of registrars with the necessary equipment, forms, supplies, and training for the production of the Georgia voter identification cards and shall maintain such equipment.

(h) The State Election Board shall adopt rules and regulations for the administration of this Code section and, without limiting the generality of the foregoing, such rules and regulations may further define or prescribe the types of

> documentation required under subsection (e) of this Code section.

O.C.G.A. § 21-2-417.1.

10. On June 22, 2006, the State Board of Elections adopted rules and regulations to implement the 2006 Photo ID Act. The State submitted the rules and regulations to the DOJ for review, and the DOJ precleared the rules and regulations on June 27, 2006. The rules and regulations provide:

> 183-1-20.01 Georgia Voter Identification Card
> (1) Intent and Purpose. These rules are promulgated pursuant to the authority granted the State Election Board under O.C.G.A. §§ 21-2-417.1 and 21-2-31. It is the intent of the State Election Board to provide for the time, place and manner in which each county Board of Registrars shall issue the Georgia Voter Identification Card to eligible electors and to provide for the acceptable types of documentation necessary to obtain a Georgia Voter Identification Card. To this end, the State Election Board has promulgated these rules and regulations.
> (2) Application for the Georgia Voter Identification Card. Beginning with the July 18, 2006 Party Primary Election each county registrar shall provide the application for the Georgia Voter Identification Card in the form designed and published by the State Election Board or its member designee(s). Any registered

voter who meets the criteria in O.C.G.A. § 21-2-417.1 and wishes to obtain a Georgia Voter Identification Card shall be required to submit the information requested in such application. It shall be the responsibility of each county registrar to ensure that each accepted application is complete.

(3) Availability of the Georgia Voter Identification Card

(a) Each county shall provide a place within the voter registrar's primary or main office location, as previously approved by the Department of Justice, to process applications for Georgia Voter Identification Cards and to process and distribute such cards.

(b) Each county registrar's office may provide additional locations or extended hours for processing applications for the Georgia Voter Identification Card and processing and distributing the cards but shall be required to comply with criteria for establishment of additional voter registration places as outlined in 183-1-6-.03(3).

(c) Each county registrar's office shall be open a minimum of eight hours per day on Monday through Friday of the week before the final primary, election, or run-off election day, except for legally observed holidays, and shall otherwise be open during normal business hours of the office in order to allow registered voters to apply for and obtain a Georgia Voter Identification Card.

(d) The voter registrar's office of each county shall provide the application and process the Georgia Voter Identification Card using the equipment, forms, supplies, and written training materials and/or verbal training provided by the State Election Board.

(e) Each county Board of Registrars shall sign and maintain an intergovernmental agreement provided by the State Election Board outlining the use of the equipment.

(4) Documentation required for application and issuance of the Georgia Voter Identification Card.

(a) In accordance with O.C.G.A. § 21-2-417.1(e), the Board of Registrars shall require the presentation and verification of the following information before issuing a Georgia Voter Identification Card:

1. A photo identity document, except that nonphoto identity document is acceptable if it includes both the applicant's full legal name and date of birth;

2. Documentation showing the applicant's date of birth;

3. Evidence that the applicant is registered to vote in the State of Georgia, either by voter precinct card, a new voter registration application or confirmation of voter's record on the statewide voter registration system or by verifying the original application in the voter registrar's office; and

4. Documentation showing the applicant's name and principal residence address.

(b) In determining whether the requirements of O.C.G.A. § 21-2-417.1(e) have been met, the following shall apply:

1. Any of the following which contains a photograph of the applicant shall constitute a photo identity document, as provided in O.C.G.A. § 21-2-417.1(e)(1):

(i) Student ID Card including public or private high school, college, university, or vocational school;

(ii) Transit Card;

(iii) Pilot's License;

(iv) Nursing Home Identification Card;

(v) Employee Identification Card;

(vi) Government Housing Authority Identification Card;

(vii) Any government issued license;

(viii) Any card accepted by local, state or federal government for the provision of benefits; or

(ix) Any card accepted by local, state or federal government for access to buildings.

2. Any of the following shall constitute a nonphoto identity document in lieu of a photo identity document as provided in O.C.G.A. § 21-2-417.1(e)(1) only if it includes both the applicant's full legal name and date of birth:

(i) Original birth certificate or certified copy of birth certificate;

(ii) Certificate of birth registration;

(iii) Voter Registration Application;

(iv) Copy of records filed in court by the applicant or on behalf of the applicant by the applicant's counsel;

(v) Naturalization documents;

(vi) Copy of Marriage License Application;

(vii) A copy of the applicant's State or Federal Tax Return filed for the previous calendar year;

(viii) Any other document issued by local, state, or federal government so long as the document provides a reasonably reliable confirmation of the identity of the applicant;

(ix) Paycheck or paycheck stub bearing the imprinted name of the applicant's employer;

(x) An original of the annual social security statement received by the applicant for current or preceding calendar year;

(xi) An original of a Medicare or Medicaid statement received by the applicant;

(xii) Certified school record or transcript for current or preceding calendar year;

(xiii) Hospital birth certificate;

(xiv) An authenticated copy of a doctor's record of post-natal care; or

(xv) A federal Affidavit of Birth, form DS-10.

3. The registrar shall accept as documentation showing the applicant's date of birth under O.C.G.A. § 21-2-417.1(e)(2) any of the documents described in subparagraph (b)2 above.

4. The registrar shall accept as proof of voter registration under O.C.G.A. § 21-2-

417.1(e)(3) the applicant's voter registration application or a voter's precinct card.

5. Any of the documents described in subparagraphs (b)(1) and (2) shall be acceptable as documentation showing the applicant's name and address of principal residence under O.C.G.A. § 21-2-417.1(e)(4) if the documentation contains the applicant's name and address of principal residence. In addition, the registrar shall also accept the following as documentation showing the applicant's name and address of principal residence if the applicant's name and address of principal residence appears on the document:

(i) Voter Precinct Card;

(ii) Utility or cable bill issued within the last sixty (60) days;

(iii) Bank statement issued within the last sixty (60) days;

(iv) Currently valid rental contracts and/or receipts for payments made within the last sixty (60) days for rent payments;

(v) A copy of the applicant's State or Federal income tax return filed for the preceding calendar year;

(vi) Homeowners insurance policy or bill for current or preceding calendar year;

(vii) Mortgage, payment coupon, deed, or property tax bill for current or preceding calendar year;

(viii) Current Automobile Registration Receipt;

(ix) Homestead Exemption documentation;

or

(x) W-2 for the preceding calendar year.

6. The application and supporting documentation of any applicant who is denied a Georgia Voter Identification Card shall be immediately forwarded via facsimile and U.S. mail to the State Election Board for automatic review to determine if the applicant has provided reasonably reliable documentary indicia confirming the identity of the applicant in which case the State Election Board shall direct the voter registrar to issue the Georgia Voter Identification Card.

B. Individual Plaintiffs and Others Claiming Injury

1. Plaintiff Bertha B. Young

11. Plaintiff Bertha B. Young lives in Rome, Georgia. (Aug. 22, 2007, Trial Tr. at 8-9.)

12. Plaintiff Bertha B. Young is seventy-eight years old. (Aug. 22, 2007, Trial Tr. at 9.)

13. Plaintiff Bertha B. Young asserts that she has been registered to vote for the last fifteen to twenty years. (Aug. 22, 2007, Trial Tr. at 10.)

14. Plaintiff Bertha B. Young voted in the last presidential election. (Aug. 22, 2007, Trial Tr. at 10) Plaintiff Bertha B. Young does not know how many times she has voted. (*Id.*)

15. Plaintiff Bertha B. Young's regular polling place is approximately one block from her home, and she can walk to it. (Aug. 22, 2007, Trial Tr. at 10, 19) Alternatively, Plaintiff Bertha B. Young can obtain a ride from her sons or a friend to the polling place. (*Id.* at 13.)

16. Plaintiff Bertha B. Young has no driver's license or passport, and has not served in the military or as a state, city, or county employee. (Aug. 24, 2007, Trial Tr. at 10-11.) Plaintiff Bertha B. Young has a photo identification card issued by the City of Rome Police Department approximately thirty years ago. (*Id.* at 11.) Plaintiff Bertha B. Young obtained that identification card to enable her to draw social security benefits after her husband died. (*Id.*)

17. Plaintiff Bertha B. Young has four children, one of whom lives in Rome, Georgia. (Aug. 22, 2007, Trial Tr. at 11-12, 15.)

18. Plaintiff Bertha B. Young had surgery on her right eye in March 2007, and needs surgery on her left eye. (Aug. 22, 2007, Trial Tr. at 12.) Plaintiff Bertha B. Young has difficulty in reading small print, as her eyes begin to water. (*Id.*)

19. Plaintiff Bertha B. Young does not drive; however, she rides a bus, takes a cab, or gets her sons to drive her. (Aug. 22, 2007, Trial Tr. at 12-13.) According to Plaintiff Bertha B. Young, her sons will take her anywhere she wants to go. (*Id.* at 15.)

Plaintiff Bertha B. Young also has friends who will drive her places. (*Id.*) In fact, Plaintiff Bertha B. Young uses a bank that is across town from her residence, and her friends and family members drive her there. (*Id.* at 16-17.)

20. Plaintiff Bertha B. Young sometimes works two days per week; on those occasions, her employer, who is one of Plaintiffs' counsel, pays someone to give her a ride.[1] (Aug. 22, 2007, Trial Tr. at 14-15.)

21. Plaintiff Bertha B. Young does not have a Voter Identification Card ("Voter ID Card"). To obtain a Voter ID Card, Plaintiff Bertha Young could ride a bus to the registrar's office in downtown Rome, which is approximately two miles from her home. (Aug. 22, 2007, Trial Tr. at 13, 22.) According to Plaintiff Bertha B. Young, a bus trip from her home to the registrar's office would take her approximately one hour, and a trip home from the registrar's office would take her approximately another hour. (*Id.* at 13-14.) Plaintiff Bertha B. Young, however, testified that her son or a friend also could drive her. (*Id.* at 21.)

22. Plaintiff Bertha B. Young feels that she should not have to obtain a Voter ID card, as she uses her police identification card to cash checks. (Aug. 22, 2007, Trial Tr. at 14.) If the Court upholds the 2006 Photo ID Act, however, Plaintiff Bertha B. Young can and will obtain a Voter ID card. (*Id.* at 14-15, 23.)

23. Plaintiff Bertha B. Young received a letter from Secretary of State Handel during the week of August 13, 2007. (Aug. 22, 2007, Trial Tr. at 13, 21.)

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[1] Plaintiff Bertha B. Young testified that she works for Attorney Edward Hine, Jr.'s family. (Aug. 22, 2007, Trial Tr. At 15.)

Plaintiff Bertha B. Young read some of the letter and could understand most of it. (*Id.*)

24. Plaintiff Bertha B. Young listens to the radio and watches television every day. (Aug. 22, 2007, Trial Tr. at 17.) Plaintiff Bertha B. Young also reads the local paper, the *Rome News-Tribune*. (*Id.*)

25. Plaintiff Bertha B. Young can read and write. (Aug. 22, 2007, Trial Tr. at 19.) Plaintiff Bertha B. Young also can sign her name and write her address. (*Id.*)

26. Plaintiff Bertha B. Young sends, receives, and reads mail. (Aug. 22, 2007, Trial Tr. at 19-20.)

27. Plaintiff Bertha B. Young understands that she could obtain an absentee ballot without giving a reason. (Aug. 22, 2007, Trial Tr. at 20.) Plaintiff Bertha B. Young has never voted absentee. (*Id.* at 20, 24.)

28. Plaintiffs' counsel asked Plaintiff Bertha B. Young to become involved in this lawsuit. (Aug. 22, 2007, Trial Tr. at 20.)

2. Plaintiff Eugene Taylor

29. Plaintiff Eugene Taylor resides in Screven County, Georgia. (Aug. 22, 2007, Trial Tr. at 52.)

30. Plaintiff Eugene Taylor traveled to Rome to testify at the bench trial. (Aug. 22, 2007, Trial Tr. at 52.) The trip took approximately four hours. (*Id.*)

31. Plaintiff Eugene Taylor quit school in the fifth grade because he had to help care for his siblings after his father died. (Aug. 22, 2007, Trial Tr. at 55-56.) Plaintiff Eugene Taylor testified that he reads a little, and that he can write his name, although writing is difficult. (*Id.* at 56.)

32. Plaintiff Eugene Taylor has never used a computer. (Aug. 22, 2007, Trial Tr. at 56.) Plaintiff Eugene Taylor watches television, and generally

watches Augusta, Georgia, channels. (*Id.* at 56-57, 68.) Plaintiff Eugene Taylor also listens to a gospel radio program on Sunday mornings that is broadcast by a South Carolina radio station. (*Id.* at 57, 69.)

33. Plaintiff Eugene Taylor does not have a Photo ID. (Aug. 22, 2007, Trial Tr. at 57.)

34. Plaintiff Eugene Taylor does not drive. (Aug. 22, 2007, Trial Tr. at 57, 62.) Plaintiff Eugene Taylor's daughter takes him places if he needs to go somewhere. (*Id.* at 57, 63.) Plaintiff Eugene Taylor's daughter has a job. (*Id.* at 58.)

35. Plaintiff Eugene Taylor's daughter picks up his medicine and his groceries. (Aug. 22, 2007, Trial Tr. at 59.)

36. Plaintiff Eugene Taylor cashes checks at his bank, but does not need a Photo ID to cash those checks because the tellers know who he is. (Aug. 22, 2007, Trial Tr. at 58.)

37. Plaintiff Eugene Taylor works a couple of times a month on a farm. (Aug. 22, 2007, Trial Tr. at 67-68.) On those occasions, someone comes and gets Plaintiff Eugene Taylor and brings him home. (*Id.*)

38. Plaintiff Eugene Taylor is registered to vote, and he has voted. (Aug. 22, 2007, Trial Tr. at 59.) According to Plaintiff Eugene Taylor, he last voted in the 1980s. (*Id.* at 59, 65-66.) Plaintiff Eugene Taylor voted for the current Screven County sheriff, and, if the sheriff ran again, Plaintiff Eugene Taylor would vote for him. (*Id.* at 59.)

39. Plaintiff Eugene Taylor's polling place is at the senior citizen's center, which is approximately seven miles from his house. (Aug. 22, 2007, Trial Tr. at 60-61, 66.) The registrar's office, which is located at the county courthouse, is approximately the same

distance from Plaintiff Eugene Taylor's house. (*Id.* at 67.)

40. Plaintiff Eugene Taylor has never voted by mail, and does not think he would do so. (Aug. 22, 2007, Trial Tr. at 62.) Plaintiff Eugene Taylor's daughter would help him vote by mail. (*Id.* at 74.)

41. Plaintiff Eugene Taylor is aware of the Photo ID requirement. (Aug. 22, 2007, Trial Tr. at 63.) If the Court upholds the Photo ID requirement, Plaintiff Eugene Taylor can obtain a Voter ID card by going to his local registrar's office. (*Id.* at 64.) Plaintiff Eugene Taylor's daughter will take him to the registrar's office, but she may need to take time off from work to do so. (*Id.*)

42. Plaintiff Eugene Taylor learned of this lawsuit through his grandson, who attended law school with one of Plaintiffs' counsel. (Aug. 22, 2007, Trial Tr. at 70.)[2] Plaintiff Eugene Taylor first learned of this case approximately two or three months ago. (*Id.*)

43. In response to questioning from Plaintiffs' counsel, Plaintiff Eugene Taylor indicated that he had joined Plaintiff NAACP at some point. (Aug. 22, 2007, at 72-73.) Plaintiff Eugene Taylor does not remember when he joined Plaintiff NAACP, and could provide only vague details about joining Plaintiff NAACP. (*Id.*) Plaintiff Eugene Taylor failed to indicate whether he still is a member of Plaintiff NAACP. (*Id.*) The Court finds that this testimony is, at best, equivocal, and finds that Plaintiff Eugene Taylor's testimony on this issue was not credible. Consequently, the Court declines to accept any

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[2] Plaintiff Eugene Taylor's grandson was a law school classmate of Jason Carter, one of Plaintiffs' attorneys. (Aug. 22, 2007, Trial Tr. at 70.)

testimony by Plaintiff Eugene Taylor as to his membership in Plaintiff NAACP.

3. Declarations

44. Plaintiffs proffered the declarations of several Georgia voters who lacked Photo ID cards in connection with the 2005 and 2006 preliminary injunction hearings. The State Defendants objected to the Court's consideration of those declarations at trial, arguing that the declarations were hearsay. The Court agrees that the declarations, in general, are hearsay, and have not been rendered admissible by the parties.[3]

At trial, Plaintiffs proffered the declarations of Eleanor Whittenburg and Ruth White, who had passed away since proffering their declarations, arguing that those declarations met the requirements of Federal Rule of Evidence 803(b)(1) or Federal Rule of Evidence 807. The Court finds that the declarations of Ms. Whittenburg and Ms. White do not satisfy Rule 803(b)(1), as Defendants did not have an opportunity to develop the testimony contained in those declarations via cross-examination. The Court further finds that those declarations do not meet the requirements of the residual exception of Rule 807, which should be used only in exceptional circumstances. The Court therefore does not consider the declarations of Ms.

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[3] Similarly, the declarations and affidavits of election officials submitted by the State Defendants in connection with the previous Motions for Preliminary Injunctions are hearsay, and the Court consequently has not considered those materials in connection with this Order.

Whittenburg and Ms. White in connection with this Order.

4. Other Deponents

a. Annie L. Johnson

45. After the trial of the case, Plaintiffs submitted the deposition of Annie L. Johnson, who previously executed two declarations on behalf of Plaintiffs. (Docket Entry No. 225.) Ms. Johnson is seventy-seven years old and lives in Plains, Georgia. (Dep. of Annie L. Johnson at 5.) Ms. Johnson quit school in the sixth grade. (*Id.*) Ms. Johnson testified that she can read and write a little, or "[e]nough to get by." (*Id.* at 25.)

46. Ms. Johnson has anemia and must take protein shots each week or month. (A. Johnson Dep. at 6, 22.) Ms. Johnson also suffers from pain in her legs. (*Id.* at 6-7.)

47. Ms. Johnson's daughter lives in Terrell County. (A. Johnson Dep. at 21.) Ms. Johnson has a son who lives in Plains, whom she sees nearly every day. (*Id.* at 21-22.) Ms. Johnson's other son lives in Albany, Georgia. (*Id.* at 21.)

48. Ms. Johnson does not drive. (A. Johnson Dep. at 7.) Ms. Johnson's son and daughter drive her places, including driving her to her doctor's appointments. (*Id.* at 7, 21-22, 42.) According to Ms. Johnson, her son in Plains provides transportation to her wherever she needs to go. (*Id.* at 21-22.) That son does not have a vehicle, but will arrange to provide one if necessary. (*Id.* at 21-22, 42.)

49. Friends also drive Ms. Johnson. (A. Johnson Dep. at 7, 23, 42.) Ms. Johnson testified that sometimes she has to pay someone $5.00 or $10.00 to drive her places. (*Id.* at 43-44.) Ms. Johnson's son

and daughter do not charge her for transportation. (*Id.* at 44.)

50. As far as Ms. Johnson is aware, Plains does not have a public transportation service. (*Id.* at 7, 22.) If Ms. Johnson needs to go somewhere, her friends or her family will take her. (*Id.* at 23.)

51. Ms. Johnson has never had a driver's license, or passport, or any other government identification other than a Social Security card. (A. Johnson Dep. at 8.) Ms. Johnson lost her social security card, and does not have a birth certificate. (*Id.*) Ms. Johnson does not have a government-issued Photo ID, and is not a government employee. (*Id.* at 9.)

52. According to Ms. Johnson, she is registered to vote. (A. Johnson Dep. at 9.) Ms. Johnson recalls voting for President Carter and in city elections. (*Id.* at 9-10, 17, 39.) Ms. Johnson testified that she last voted approximately two years ago, and that she voted in Americus, Georgia, on that occasion. (*Id.* at 10-11, 20.) Ms. Johnson testified that she believed she voted in Americus because there was a problem with the voting machines in Plains. (*Id.* at 11, 17.) A member of the city council transported Ms. Johnson and other people from Plains to Americus to vote via a van. (*Id.* at 11-12, 20.)

53. Ms. Johnson ordinarily would vote in Plains, and someone would transport her to the polls. (A. Johnson Dep. at 12, 21.) When Ms. Johnson votes in Plains, people generally know her. (*Id.* at 13.)

54. According to Ms. Johnson, her county registrar's office is located in the courthouse in Americus. (A. Johnson Dep. at 13.) Ms. Johnson also testified that the closest driver's license was somewhere in Americus. (*Id.* at 13.) Ms. Johnson goes to Americus at least once a month. (*Id.* at 13, 44.)

55. Ms. Johnson's husband voted absentee on one occasion. (A. Johnson Dep. at 14.) Ms. Johnson apparently assisted her husband in voting his absentee ballot. (*Id.* at 14, 18-19.)

56. Ms. Johnson prefers to vote in person. (A. Johnson Dep. at 14, 34.) When asked why she prefers to vote in person, Ms. Johnson testified:

> Well, I guess because one thing if the papers, you send them in the mail, they may get lost or I don't understand all the questions on it and I can't fill it out like I should. And if I come to vote I maybe don't have to do the writing. That's all. Nothing I got against it, just more convenience for me if I can get here to vote in person. It saves a lot of papers.

(*Id.* at 14.) Ms. Johnson testified that she does not wait until the day of the election to decide which candidate will receive her vote. (*Id.* at 15.) Ms. Johnson did not know that she could vote absentee by mail without presenting a Photo ID. (*Id.* at 35.)

57. Ms. Johnson does not have a computer, and does not use the Internet. (A. Johnson Dep. at 15.)

58. Ms. Johnson initially testified that she did not recall giving two declarations in this case. (A. Johnson Dep. at 25, 27.) Ms. Johnson later testified that "President Carter's deacon" came to her house with the statements, and she signed the statements. (*Id.* at 27-29, 37-38, 40, 45.) Ms. Johnson's testimony indicates that she did not fully understand what she was signing. (*Id.* at 38, 45-46.)[4]

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[4] Ms. Johnson apparently thought that she had done something wrong or was in trouble for signing the statements. A Johnson Dep. at 33 ("So here I did wrong for signing this paper here? Is that what you're talking about?"), 34 ("I signed

59. Ms. Johnson does not believe that she should have to show a Photo ID to vote, because she has been voting without one for many years. (A. Johnson Dep. at 15, 26.) Ms. Johnson did not know that she could go to her registrar's office and get a free Voter ID card. (*Id.* at 31-32.)

60. Ms. Johnson testified that she knew she would be able to get a Voter ID card, and that she planned to go to Americus during either the week of her deposition or the following week. (A. Johnson Dep. at 31.) Ms. Johnson testified that she would not mind getting a Voter ID card if she did not have to have a birth certificate to obtain one and if the Voter ID card were free. (*Id.* at 32, 41.)

61. Ms. Johnson further stated that she did not think that it would be hard to get a Voter ID card. (A. Johnson Dep. at 33.) According to Ms. Johnson:

> If I can get the photo ID, I don't mind getting it. She told me I can get it and don't have to pay for it. I didn't know all the details of getting one and I do now. That's why I haven't gotten one. But since she says it's free, I will get one, pick up one as soon as I get over there.

(*Id.* at 41.)

b. Larry Dewberry

62. Plaintiffs also filed the deposition of Larry Dewberry after the trial of this case concluded.

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these papers wrong, is that what you mean?"), 38 ("And if I know it was wrong I never would have signed them."), 45 (expressing concern as to whether Ms. Johnson had done something wrong by signing the statements), 46 ("So I hope I didn't do wrong because I never been in trouble in my life ").

(Docket Entry No. 224.) Mr. Dewberry lives in Fort Valley, Georgia, and is fifty-four years old. (Dep. of Larry Dewberry at 5.) Mr. Dewberry completed high school and attended, but did not complete, college. (*Id.* at 5-6, 13.)

63. Mr. Dewberry previously had a driver's license, but does not currently have one. (L. Dewberry Dep. at 7, 15-16.) Mr. Dewberry can drive, but does not drive. (*Id.* at 7.)

64. Mr. Dewberry has an expired military ID and an expired college ID. (L. Dewberry Dep. at 7, 18-19.)

65. Mr. Dewberry either walks places or has his brother or sister drive him places. (L. Dewberry Dep. at 8.) Mr. Dewberry's brother and sister previously have taken time off from work to drive Mr. Dewberry places. (*Id.* at 8.) Additionally, Mr. Dewberry's children give him rides. (*Id.* at 17.)

66. According to Mr. Dewberry, Fort Valley has vans that will transport people. (L. Dewberry Dep. at 10.) Mr. Dewberry believes the fee for the van ride is $2.00. (*Id.*)

67. Mr. Dewberry is registered to vote, and thinks he registered in the 1970s. (L. Dewberry Dep. at 8, 12, 20.) Mr. Dewberry also recalls registering to vote on May 4, 2006, at his local registrar's office. (*Id.* at 20-21, 28.) Some people from Atlanta took Mr. Dewberry to register to vote on that occasion. (*Id.* at 21-22.)

68. Mr. Dewberry is not certain when he last voted, but believes he last voted in 2005 or 2006. (L. Dewberry Dep. at 8-9, 22-23.) Ms. Dewberry rode with a lady named "Inez" or in cars provided by candidates to his polling place. (*Id.* at 9-10.)

69. The closest DDS service center to Mr. Dewberry's residence is in Perry, Georgia. (L.

Dewberry Dep. at 10.) According to Mr. Dewberry, that DDS service center is approximately ten to twelve miles from his residence. (*Id.* at 10-11.)

70. Mr. Dewberry's local registrar's office is approximately one-quarter of a mile from Mr. Dewberry's residence, and he can walk there in approximately seven to eight minutes (L. Dewberry Dep. at 17.)

71. Mr. Dewberry has never voted via absentee ballot. (L. Dewberry Dep. at 11, 34.) Mr. Dewberry testified that he prefers to vote in person, but stated that he did not know why. (*Id.* at 11.)

72. Mr. Dewberry further testified that he did not really think that people should be required to have Photo ID to vote, although "it could be good to have." (L. Dewberry Dep. at 12, 39.)

73. Mr. Dewberry now understands that he does not have to pay for a Voter ID card. (L. Dewberry Dep. at 29.) According to Mr. Dewberry, no one told him that he could go to his registrar's office and get a Voter ID card for free. (*Id.* at 32.) If Mr. Dewberry had known that information, he would have gotten a Voter ID card. (*Id.*) Mr. Dewberry plans to get a Voter ID card. (*Id.*)

74. Mr. Dewberry thought he needed a birth certificate to get a Voter ID card. (L. Dewberry Dep. at 35.)

75. Mr. Dewberry testified that it was not a hardship for him to walk to the registrar's office and get a Voter ID card. (L. Dewberry Dep. at 36.)

76. Mr. Dewberry signed two declarations for use in this case. (L. Dewberry Dep. at 24 & Exs. 1-2.) Mr. Dewberry contends that he had registered to vote before he signed the declarations. (*Id.* at 27.)

C. Organizational Plaintiffs

77. Edward DuBose, who resides in Columbus, Georgia, serves as the state president for the Georgia State Conference of Plaintiff NAACP. (Aug. 22, 2007, Trial Tr. at 27, 29.) In that position, Mr. DuBose's responsibilities include overseeing all operations of Plaintiff NAACP's units in Georgia. (*Id.* at 29.)

78. Plaintiff NAACP's mission is to ensure political, educational, and economic equality for its members, as well as to eliminate racial discrimination and hatred. (Aug. 22, 2007, Trial Tr. at 29.) Plaintiff NAACP seeks to empower voters to go to the polls and to vote on issues. (*Id.*) To that end, Plaintiff NAACP is involved in voter registration, mobilization, and education. (*Id.* at 30.)

79. Plaintiff NAACP sets up voter registration drives across Georgia. (Aug. 22, 2007, Trial Tr. at 30.) At present, Plaintiff NAACP has fifteen to twenty voter registration drives scheduled throughout Georgia. (*Id.* at 31.)

80. Plaintiff NAACP's voter education efforts include attempting to inform voters concerning issues. (Aug. 22, 2007, Trial Tr. at 31.) To accomplish that goal, Plaintiff NAACP provides a political forum and literature, and grades politicians on issues important to Plaintiff NAACP's constituents. (*Id.*)

81. As part of Plaintiff NAACP's voter mobilization efforts, Plaintiff NAACP has undertaken initiatives to get voters to the polls that involve working with other organizations. (Aug. 22, 2007, Trial Tr. at 32.) Plaintiff NAACP uses churches and civic organizations to transport individuals to polls, and many of the individuals transported are elderly, disabled, or disadvantaged individuals. (*Id.*)

82. In 2004, Plaintiff NAACP spent $20,000 to $30,000 on its voter empowerment initiative. (Aug. 22, 2007, Trial Tr. at 32, 39.) Funds for that effort came from both local and national sources. (*Id.* at 39.) Plaintiff NAACP's national organization will attempt to examine voting laws to determine which states need additional money. (*Id.* at 39-40.) In the past, Plaintiff NAACP's national organization has attempted to re-direct resources to other states with Photo ID requirements. (*Id.* at 40.) The reallocation could occur with any change in election law. (*Id.* at 40.) Alternatively, Plaintiff NAACP could encourage its members to vote by mail. (*Id.* at 49.)

83. Plaintiff NAACP generally uses volunteers to staff its voter empowerment initiatives, but it must use funds to purchase literature and set up forums. (Aug. 22, 2007, Trial Tr. at 32.)

84. Plaintiff NAACP is aware of the Photo ID requirement. (Aug. 22, 2007, Trial Tr. at 33.) Plaintiff NAACP generally uses its voter empowerment resources to maximize voter mobility and education. (*Id.*) If the Court sustains the Photo ID requirement, Plaintiff NAACP might have to redistribute its resources for voter education to help registered voters learn of the Photo ID requirements and to get voters in rural areas to obtain Photo ID cards. (*Id.*)

85. According to Mr. DuBose, some of the chapter presidents of the Georgia State Conference of Branches of Plaintiff NAACP informed him that at least five individuals would require assistance in obtaining a Photo ID card. (Aug. 22, 2007, Trial Tr. at 34.) Mr. DuBose, however, did not identify those individuals or specifically indicate whether those individuals actually were NAACP members. (*Id.*)

86. Mr. DuBose testified that the Photo ID requirement is an important issue for Plaintiff NAACP because the Photo ID requirement potentially affects Plaintiff NAACP's members, and because the Photo ID requirement potentially will affect the population that Plaintiff NAACP serves. (Aug. 22, 2007, Trial Tr. at 34.)

87. Mr. DuBose testified that Plaintiff NAACP educates voters who are physically unable to travel to the polls, and makes an effort to engage those voters in absentee voting. (Aug. 22, 2007, Trial Tr. at 37) Absentee voting in Georgia has become easier, as it now is "no-excuse" absentee voting. (*Id.*) Mr. DuBose, however, stated that many African-American voters, particularly elderly voters, are afraid of voting by mail, as they are concerned that their vote will not be counted. (*Id.* at 44-45.) According to Mr. DuBose, those voters have more reassurance that their votes will be counted if they vote in person. (*Id.*) Mr. DuBose further testified that some individuals are illiterate and will have problems using an absentee ballot; however, he also acknowledged that those individuals can get a family member to request an absentee ballot and to assist them in completing the ballot. (*Id.* at 46-47.) Although some individuals who need assistance in voting may be embarrassed to ask for assistance at the polls, voting by mail eliminates that particular embarrassment. (*Id.* at 47-48.)

D. Voting Procedures, Changes in the Voting Laws, and Efforts to Inform Voters of Changes

1. Changes in Voting Laws and Concerns of Fraud

88. Prior to January 8, 2007, Cathy Cox served as Georgia's Secretary of State. (Oct. 12, 2005, Hr'g Tr. at 12.) During that same period, former Secretary of State Cox also served as the Chair of the State Election Board. (*Id.* at 13.) During the relevant period, the State Election Board consisted of five members, including former Secretary of State Cox, a representative from the Georgia Democratic Party, a representative from the Georgia Republican Party, a representative from the Georgia Senate, and a representative from the Georgia House of Representatives. (*Id.* at 13-14.) During her tenure, former Secretary of State Cox served as the principal official in the State Government in charge of elections and for purposes of the Help America Vote Act of 2002 ("HAVA") and the National Voter Registration Act. (*Id.* at 14.)

89. During the ten years in which former Secretary of State Cox was affiliated with the Secretary of State's Office, that office received no reports of voter impersonation involving a scenario in which a voter appeared at the polls and voted as another person, and the actual person later appeared at the polls and attempted to vote as himself. (Oct. 12, 2005, Hr'g Tr. at 15-20; July 12, 2006, Hr'g Tr. at 10-11, 29.) Former Secretary of State Cox did not dispute that under the previous law, it was possible for the above voter impersonation scenario or another form of in-person voter fraud to occur. (Oct. 12, 2005, Hr'g Tr. at 15-20.)

90. Further, former Secretary of State Cox and her staff were not physically present in all 159 counties and the various municipalities on election days. (Oct. 12, 2005, Hr'g Tr. at 15-20; July 12, 2006, Hr'g Tr. at 30.) Secretary of State Cox therefore

acknowledged that issues related to in-person voter fraud may have arisen and yet not been reported to her office. (Oct. 12, 2005, Hr'g Tr. at 15-20; July 12, 2006, Hr'g Tr. at 31.) According to former Secretary of State Cox, local election officials are in the best position to know of such incidents. (Oct. 12, 2005, Hr'g Tr. at 15-20.)

91. According to former Secretary of State Cox, during her tenure, the State Election Board received a number of complaints of irregularities with respect to absentee ballots. (Oct. 12, 2005, Hr'g Tr. at 15; July 12, 2006, Hr'g Tr. at 11.) In fact, former Secretary of State Cox recalled that the State Election Board discussed complaints of fraud and irregularities in absentee voting at most of the hearings she attended. (Oct. 12, 2005, Hr'g Tr. at 15.) A number of those complaints involved irregularities in collecting and returning absentee ballots, in which someone who was not authorized to collect or mail the absentee ballots did so for another voter. (Oct. 12, 2005, Hr'g Tr. at 15; July 12, 2006, Hr'g Tr. at 46.)

92. Former Secretary of State Cox also was aware of a previous incident in Dodge County, Georgia, involving vote buying and selling of absentee ballots. (Oct. 12, 2005, Hr'g Tr. at 18-19.) The Dodge County incident involved in-person absentee voting. (*Id.*)

93. During former Secretary of State Cox's tenure, Georgia had procedures and practices in place to detect voter fraud. (Oct. 12, 2005, Hr'g Tr. at 42.) Those procedures included verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. (*Id.*) Georgia also imposed criminal penalties for voter impersonation. (*Id.*) Most violations of Georgia election laws were punishable as felonies. (*Id.*)

According to former Secretary of State Cox, no evidence indicated that the criminal penalties failed to deter in-person voter fraud sufficiently. (*Id.*)

94. According to former Secretary of State Cox, the integrity of the voter list also is extremely important in preventing voter fraud. (Oct. 12, 2005, Hr'g Tr. at 59.) Former Secretary of State Cox's office undertook an investigation in response to an article published in the *Atlanta Journal-Constitution* concerning fraudulent voting. (*Id.*) The investigation revealed that the specific instance of voter fraud outlined in the *Atlanta Journal-Constitution,* involving a report that Alan J. Mandel had voted after his death, actually did not occur. (*Id.* at 59-61.)

95. During former Secretary of State Cox's tenure, her office attempted to ensure that voter records were maintained and up to date. (Oct. 12, 2005, Hr'g Tr. at 62-63; July 12, 2006, Hr'g Tr. at 19.) Former Secretary of State Cox testified that, during her tenure, the Secretary of State's Office sent information concerning dead voters to local elections officials on a monthly basis, and had the authority to remove the names of deceased voters from the voter rolls if the local elections officials failed to do so in a timely manner. (Oct. 12, 2005, Hr'g Tr. at 62-63; July 12, 2006, Hr'g Tr. at 19) To former Secretary of State Cox's best knowledge, the procedures for removing dead voters were consistently followed during her tenure; however, former Secretary of State Cox could not vouch for what every individual county did. (July 12, 2006, Hr'g Tr. at 19.) Former Secretary of State Cox's office was authorized to remove only deceased voters from the voter registration list, and could not remove voters who are otherwise ineligible to vote. (*Id.* at 19-20.)

Former Secretary of State Cox's office also relied on the counties to add voters who had newly registered to vote, and had no authority to add newly registered voters. (*Id.*)

96. Former Secretary of State Cox expressed concerns with respect to H.B. 244, noting that allowing individuals to vote absentee ballots without showing identification and removing the conditions previously required for obtaining absentee ballots opened a gaping opportunity for fraud. (October 12, 2005, Hr'g Tr. at 15-17.) Former Secretary of State Cox indicated that concerns with respect to absentee ballots involved incidents of individuals picking up absentee ballots for other individuals without the required family relationship and individuals removing absentee ballots from voters' mailboxes. (*Id.* at 17-19.) According to Secretary of State Cox, the only restrictions on absentee voting that tended to prevent fraud were the restrictions for obtaining an absentee ballot. (*Id.*)

97. Former Secretary of State Cox also informed Governor Perdue that she believed the Photo ID requirement for in-person voting was unnecessary, created a significant obstacle to voting for many voters, was unlikely to receive preclearance from the Justice Department, violated the Georgia Constitution, and unduly burdened the fundamental right to vote. (Oct. 12, 2005, Hr'g Tr. at 21-22.) The opinion that former Secretary of State Cox expressed in her letter to Governor Purdue remained her personal opinion at the time of the preliminary injunction hearings; however, former Secretary of State Cox acknowledged that she was obligated to enforce and carry out the Photo ID

requirement in her official capacity until the law is declared invalid. (*Id.* at 22.)

98. Former Secretary of State Cox also requested that Governor Perdue seek the opinion of Georgia's Attorney General before approving HB 244. (Oct. 12, 2005, Hr'g Tr. at 23.) Former Secretary of State Cox was not aware that Governor Perdue sought an opinion from Georgia's Attorney General concerning HB 244, and was not aware of any opinion issued by Georgia's Attorney General concerning the Photo ID requirement. (*Id.* at 23-24.)

99. Former Secretary of State Cox was aware of efforts to submit fraudulent voter registrations. (Oct. 12, 2005, Hr'g Tr. at 25.) Those efforts occurred both before and after Georgia enacted its Photo ID requirement. (*Id.*)

100. According to former Secretary of State Cox, at the time of the preliminary injunction hearings, Georgia had no requirement that a person seeking to register to vote present a Photo ID. (Oct. 12, 2005, Hr'g Tr. at 25-26.) Indeed, HB 244 did not address voter registration. (*Id.*)

101. Former Secretary of State Cox testified that HB 244 expanded the opportunity for voters to obtain absentee ballots. (Oct. 12, 2005, Hr'g Tr. at 31; July 21, 2006, Hr'g Tr. at 43-44.) Prior to July 1, 2005, voters seeking to obtain absentee ballots had to aver that they met certain requirements. (Oct. 12, 2005, Hr'g Tr. at 31.) After July 1, 2005, those requirements no longer applied for purposes of obtaining absentee ballots. (*Id.*)

102. Former Secretary of State Cox opined that a number of Georgia voters are elderly, have no driver's licenses, and have no need for a state-issued Photo ID card other than for voting purposes. (Oct. 12, 2005, Hr'g Tr. at 43.) Further, according to

former Secretary of State Cox, a number of Georgia voters who are elderly or have low incomes do not have automobiles or use mass transit, and would have difficulty obtaining a Photo ID to vote. (*Id.*)

103. On January 8, 2007, Karen C. Handel took office as Georgia's Secretary of State. (Aug. 22, 2007, Trial Tr. at 76.)

104. Secretary of State Handel had no role in drafting, advocating, or preparing the 2005 Photo ID Act, and has not spoken to individuals involved in those activities. (Aug. 22, 2007, Trial Tr. at 77.)

105. Similarly, Secretary of State Handel had no role in drafting, advocating, or preparing the 2006 Photo ID Act, and has not spoken to individuals involved in those activities. (Aug. 22, 2007, Trial Tr. at 77.)

106. Secretary of State Handel has no knowledge indicating that her office has received a complaint of in-person voter fraud during her tenure. (Aug. 22, 2007, Trial Tr. at 78.)

107. Secretary of State Handel pointed out that any such reports would not come to her personal attention, but rather would come to the attention of the Inspector General, who would investigate the complaint. (Aug. 22, 2007, Trial Tr. at 78; Aug. 24, 2007, Trial Tr. at 31-32.) After investigating the complaint, the Inspector General would bring the matter before the State Election Board. (Aug. 22, 2007, Trial Tr. at 78; Aug. 24, 2007, Trial Tr. at 31-32.) Secretary of State Handel does not learn the details of a complaint until the complaint actually comes before the State Elections Board. (Aug. 22, 2007, Trial Tr. at 78; Aug. 24, 2007, Trial Tr. at 31-32.)

108. Secretary of State Handel testified that her office does not physically update the voter

registration rolls to reflect address changes and deaths. (Aug. 22, 2007, Trial Tr. at 79-81.)

109. Instead, Secretary of State Handel's office forwards any information that it receives concerning address changes and deaths to the counties, which in turn bear responsibility for making the changes. (Aug. 22, 2007, Trial Tr. at 79-81.)

110. Secretary of State Handel's office receives a report from the Department of Vital Statistics listing deaths that have occurred. (Aug. 22, 2007, Trial Tr. at 80-81.) Secretary of State Handel does not know how frequently her office receives that report. (*Id.* at 81.)

111. According to Secretary of State Handel, her office needs to be more systematic with respect to keeping the voter list updated. (Aug. 22, 2007, Trial Tr. at 81.)

112. Secretary of State Handel's office is working with another State association to attempt to develop technology that will enable Secretary of State Handel's office to manage the voter registration list and associated data better. (Aug. 22, 2007, Trial Tr. at 82.)

113. Secretary of State Handel did not know the date that the voter rolls last were purged to remove voters who had died. (Aug. 22, 2007, Trial Tr. at 81-83.)

2. In-Person Voting

114. Presently, elections officials do not compare signatures on voter certificates of in-person voters to signatures on voter registration cards. (Oct. 12, 2005, Hr'g Tr. at 34.)

115. The voter registration cards are not physically present at the polling places. (Oct. 12, 2005, Hr'g Tr. at 34.)

116. Former Secretary of State Cox testified that it would be possible to send voter registration cards to polling places, but that comparing signatures on voter certificates to signatures on voter registration cards for in-person voters would be time-consuming. (Oct. 12, 2005, Hr'g Tr. at 35.)

117. Similarly, current Secretary of State Handel observed that comparing voter signatures for in-person voters on election day would be a "very onerous process." (Aug. 22, 2007, Trial Tr. at 127.)

118. Although former Secretary of State Cox testified that her office discussed digitizing the signatures on voter education cards, her office did not pursue that option. (July 12, 2006, Hr'g Tr. at 57.)

119. Local elections officials for counties are connected to the Secretary of State's Office through a mainframe computer. (Oct. 12, 2005, Hr'g Tr. at 64, 72.) The Secretary of State's Office does not have that capacity for municipal elections officials; however, in many cases, county elections officials also manage elections for municipalities within their counties. (*Id.*)

120. An individual who votes in person but does not present a Photo ID may vote a provisional ballot. (Oct. 12, 2005, Hr'g Tr. at 82, 86.) Elections officials, however, will not count the provisional ballot unless the voter returns to the registrar's office within forty-eight hours and presents a Photo ID. (*Id.* at 82.)

121. Voters who vote in-person are required to sign a voter certificate certifying that the information provided on the certificate is true, under penalty of perjury. (Oct. 12, 2005, Hr'g Tr. at 34; July 12, 2006, Hr'g Tr. at 24-25; Aug. 22, 2007, Trial Tr. at 83, 85-86, 126.) Making a false statement on

the certificate is a felony. (July 12, 2006, Hr'g Tr. at 24, 26; Aug. 22, 2007, Trial Tr. at 84, 86.)

122. The Georgia legislature recently amended the voting laws to increase the penalties for fraudulently casting an absentee ballot and for completing a voter certificate falsely to provide for a term of imprisonment of up to ten years. (Aug. 22, 2007, Trial Tr. at 84.)

123. A voter who presents a Photo ID, or any other form of identification, with an address that differs from the address on the voter's voter registration, may cast a vote, but must do so using a provisional ballot. (Aug. 22, 2007, Trial Tr. at 88-89.)

3. Absentee Voting in Georgia

124. To obtain an absentee ballot, a voter must send in a request to the local registrar providing his or her name, address, and an identifying number, or must appear in person at the registrar's office and provide such information. (Oct. 12, 2005, Hr'g Tr. at 31, 46; July 12, 2006, Hr'g Tr. at 42.) A voter wishing to apply for an absentee ballot, however, need not complete a particular form. (Oct. 12, 2005, Hr'g Tr. at 46; July 12, 2006, Hr'g Tr. at 42-43.)

125. Instead, a voter who desires an absentee ballot need only send a letter or piece of paper to his or her county registrar stating that the voter wants an absentee ballot and providing the voter's name and address. (July 12, 2006, Hr'g Tr. at 42-43, 47; Aug. 24, 2007, Trial Tr. at 29.) If the voter cannot complete such a letter or piece of paper himself, he may obtain assistance from someone else. (July 12, 2006, Hr'g Tr. at 43, 59; Aug. 24, 2007, Trial Tr. at 29.)

126. Similarly, a voter may obtain assistance from someone else when completing an absentee ballot

and placing it in the required inner and outer envelopes. (July 12, 2006, Hr'g Tr. at 43, 48-49.)

127. Local elections officials are supposed to compare the signature on an absentee ballot request to the signature on the voter's registration card. (Oct. 12, 2005, Hr'g Tr. at 32-33; Aug. 22, 2007, Trial Tr. at 93.) If the signatures match, the local elections officials will send an absentee ballot to the address listed on the voter's registration. (Oct. 12, 2005, Hr'g Tr. at 32-33.) A voter who wishes to vote an absentee ballot need not provide a Photo ID unless that voter registered by mail, did not provide identification, and is voting for the first time by absentee ballot. (*Id.* at 84-85.)

128. After receiving an absentee ballot, the voter must complete the ballot and return it to the registrar, either by hand-delivery to the registrar's office by the voter or certain relatives of the voter, or by mail. (Oct. 12, 2005, Hr'g Tr. at 46-47; Aug. 22, 2007, Trial Tr. at 127.) Even if an absentee ballot contains a postmark indicating that the voter mailed it on an earlier date, elections officials will not count the absentee ballot if the ballot is not received in the registrar's office by 7:00 p.m. on the day of the applicable election. (Oct. 12, 2005, Hr'g Tr. at 47; Aug. 22, 2007, Trial Tr. at 127.) Exceptions to this rule exist for voters who are members of the military or reside overseas. (Oct. 12, 2005, Hr'g Tr. at 47.)

129. An absentee ballot that arrives in the registrar's office should be returned in two envelopes-an inner blank "privacy" envelope and an outer envelope that contains an oath signed by the voter. (Oct. 12, 2005, Hr'g Tr. at 32.) Local elections officials compare the signature on the oath contained on the outer envelope to the signature on the voter's registration card to verify the voter's

identity. (*Id.* at 32-33, 76; Aug. 22, 2005, Trial Tr. at 93.)

130. Former Secretary of State Cox testified that the signature verification procedure is the only safeguard currently in place in Georgia to prevent imposters from voting by using absentee ballots. (Oct. 12, 2005, Hr'g Tr. at 33.) The verification process is done manually. (*Id.*)

131. Absentee ballots are submitted to the local registrars' offices over a forty-day period. (Oct. 12, 2005, Hr'g Tr. at 33.) However, if fifty percent of voters decided to vote by absentee ballot in any given election, local elections officials would have a difficult time completing the necessary signature verifications. (July 12, 2006, Hr'g Tr. at 51.)

132. Once a voter returns an absentee ballot to the registrar's office, the voter cannot change that ballot. (Oct. 12, 2005, Hr'g Tr. at 50-51.) The voter, however, has the right to notify the registrar that the voter intends to cancel the absentee ballot and vote in person. (*Id.*)

4. The Data Matches

133. In June 2006, former Secretary of State Cox's office issued a press release indicating that over 600,000 voters lacked either a valid Georgia driver's license or a Photo ID card issued by DDS. (July 12, 2006, Hr'g Tr. at 12-14) Former Secretary of State Cox's office obtained that information from a data match that former Secretary of State Cox authorized. (*Id.* at 14.) To conduct the data match, former Secretary of State Cox's office provided DDS with a list of registered voters that former Secretary of State Cox's office maintained. (*Id.* at 14-15, 33-34; Aug. 23, 2007, Trial Tr. at 106-07.) DDS then compared the list of registered voters to its database

of individuals who had valid Georgia driver's licenses and Photo ID cards issued by DDS. (July 12, 2006, Hr'g Tr. at 15-17, 33-34; Aug. 23, 2007, Trial Tr. at 107-08.) DDS returned a list of over 600,000 individuals who appeared on the voter registration list and who appeared to lack either a valid Georgia driver's license or a DDS-issued Photo ID card. (July 12, 2006, Hr'g Tr. at 20-21; Aug. 23, 2007, Trial Tr. at 108.)

134. The list returned by DDS intended to match individuals by last name, date of birth and social security number. (July 12, 2006, Hr'g Tr. at 21.) Individuals whose social security numbers were not in the database appeared on the list as not having a valid Georgia driver's license or DDS-issued Photo ID card. (*Id.*)

135. According to former Secretary of State Cox, in ordering the data match, her office was not intending to inflate the numbers of voters who purportedly lacked a Georgia driver's license or Photo ID card. (July 12, 2006, Hr'g Tr. at 17.) Rather, her office was attempting to identify the smallest number of voters possible who lacked a Photo ID so that her office could do a direct mailing to advise those voters of the 2006 Photo ID Act's requirements. (*Id.*)

136. On June 23, 2006, former Secretary of State Cox's office issued another press release stating that the voters who purportedly lacked a Photo ID were disproportionately elderly or minority voters. (July 12, 2006, Hr'g Tr. at 18.) The numbers used for that press release came from the data match that former Secretary of State Cox's office ordered. (*Id.*)

137. Former Secretary of State Cox testified that she was not aware of other data available to her office or to the State that would provide more

accurate information concerning the number of voters who lacked a Photo ID. (July 12, 2006, Hr'g Tr. at 17-18.)

138. Former Secretary of State Cox testified that she had learned of a "few dozen" inaccuracies in the data match list of voters. (July 12, 2006, Hr'g Tr. at 21, 35.) Former Secretary of State Cox, however, had no personal knowledge of the data match list's accuracy. (*Id.* at 21, 35-36.)

139. Former Secretary of State Cox did not know how many Georgia voters lack any acceptable form of Photo ID under the 2006 Photo ID Act. (July 12, 2006, Hr'g Tr. at 32-33, 38.) Specifically, her office did not match its list of registered voters to federal government databases, to databases of other state government agencies that issue identification cards, or to tribal identification lists. (*Id.* at 37-38.)

140. After the Court issued its July 14, 2006, Order enjoining the Photo ID requirement for the July 2006 primary elections, the State Election Board continued to work with DDS representatives to attempt to obtain a list of registered Georgia voters who appeared to lack either a Georgia driver's license or a Georgia Photo ID card issued by DDS. (Sept. 14, 2006, Hr'g Tr. at 26-28; Aug. 22, 2007, Trial Tr. at 134; Aug. 23, 2007, Trial Tr. at 109-110.)

141. In response to the State Election Board's request, the DDS eventually returned a list in August or September 2006 of 106,522 Georgia voters who purportedly lacked a Georgia driver's license or Georgia Photo ID card, and approximately 198,000 other voters who had previously had a Georgia driver's license that either had been canceled, revoked, suspended, or declared invalid. (Pls.' Ex.

22; Sept. 14, 2006, Hr'g Tr. at 30; Aug. 22, 2007, Trial Tr. at 134.)

142. DDS has over eleven million driver's records in its database. (Aug. 22, 2007, Trial Tr. at 135; Aug. 23, 2007, Trial Tr. at 101.)

143. DDS's database includes a number of expired driver's licenses, some with listed expiration dates occurring as early as 1900. (Aug. 22, 2007, Trial Tr. at 135, 138-39; Aug. 23, 2007, Trial Tr. at 104-05.) According to DDS information technology manager Loraine Piro, the earliest reliable expiration date listed in the DDS database likely is from the 1970s. (Aug. 22, 2007, Trial Tr. at 139.)

144. In June 2007, the Secretary of State's Office sent information to DDS and requested that DDS perform another data match. (Aug. 22, 2007, Trial Tr. at 104, 136-37; Aug. 23, 2007, Trial Tr. at 111.) In particular, the Secretary of State's Office sent 5,084,239 voter names to DDS, and requested that DDS use the same matching criteria and procedures as it used to create the August or September 2006 data match. (Aug. 22, 2007, Trial Tr. at 136-37; Aug. 23, 2007, Trial Tr. at 110-11.)

145. DDS ran another data match, and concluded that 4,568,919 of the individuals on the Secretary of State's list had a valid, current Georgia driver's license. (Aug. 22, 2007, Trial Tr. at 104-05; Aug. 23, 2007, Trial Tr. at 111-12; Pls. Ex. 98; State Defs.' Ex. 37.)

146. DDS, however, was unable to match 198,378 of the records provided by the Secretary of State. (Aug. 22, 2007, Trial Tr. at 104; Pls. Ex. 98; State Defs.' Ex. 37.)

147. DDS did not run other screens on the database to determine whether it could decrease the

number of "no-match" voters. (Aug. 23, 2007, Trial Tr. at 104.)

148. The DDS data matches simply match the voter registration information to the DDS's own database, and do not indicate whether the voters have Photo ID cards issued by an agency other than DDS. (Aug. 23, 2007, Trial Tr. at 123.)

149. The Secretary of State's Office also provided DDS with information concerning 1,075,467 registered voters in twenty-two Georgia counties that intend to hold special elections in September 2007. (Aug. 22, 2007, Hr'g Tr. at 107, 137.)

150. DDS ran a data match comparing the Secretary of State's list of registered voters in the twenty-two counties with the DDS's own records. (Aug. 22, 2007, Hr'g Tr. at 107, 137, 155.)

151. DDS's data match indicated that, of the 1,075,467 registered voters from the twenty-two counties, 948,014 of the voters had valid Georgia driver's licenses, 792 of the voters had cancelled driver's licenses, fifty of the voters had canceled permits, ten of the voters had been denied licenses, eight voters had been disqualified, twenty-seven voters had been disqualified from holding a commercial driver's license ("CDL"), three voters were not licensed, 367 of the voters had revoked licenses, 13,389 of the voters had surrendered licenses; 10,295 of the voters had suspended licenses, and 51,707 of the voters had expired licenses or DDS-issued ID cards. (Pls.' Ex. 99; State Defs.' Ex. 38.) Of the 51,707 voters with expired DDS-issued documents, 6,961 of the voters had expired DDS-issued ID cards. (Pls.' Ex. 99; State Defs.' Ex. 38.) 49,054 voters appeared as "no matches" on the list, indicating that DDS could not match those voters' information to any record in

DDS's database. (Aug. 22, 2007, Trial Tr. at 107, 155.)

152. After Secretary of State Handel's office learned that Berrien County, Georgia, also planned to hold elections on September 18, 2007, the office requested that the DDS run another data match for registered voters in Berrien County. (Aug. 22, 2007, Trial Tr. at 158.)

153. Although Secretary of State Handel's office has information pertaining to the race, gender, and age of voters, Secretary of State Handel's office did not use the DDS data match to determine how many of the individuals appearing on the no-match lists are African-American or elderly. (Aug. 22, 2007, Trial Tr. at 119-20, 159.)

5. Attempts to Educate Voters

154. After the Photo ID requirement received preclearance from the Justice Department, Secretary of State Cox ensured that the Elections Division conducted necessary training, distributed necessary supplies, and did everything possible to ensure that the Photo ID requirement was carried out in every election, including the elections held on August 26, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (Oct. 12, 2005, Hr'g Tr.) The Elections Division also provided information to the public concerning the Photo ID requirement via the website for the Secretary of State's Office and through other public information efforts. (*Id.*)

155. The State Election Board has promulgated rules and regulations to enforce the 2006 Photo ID Act. (July 12, 2006, Hr'g Tr. at 38, 70.) To former Secretary of State Cox's knowledge, no copies of those rules and regulations have been mailed to any

registered voters. (*Id.* at 38.) Former Secretary of State Cox testified that her office would mail copies of the rules and regulations to voters who requested copies. (*Id.*) Former Secretary of State Cox's office shared the rules and regulations with the county registrars. (*Id.*) Former Secretary of State Cox's office also posted the rules and regulations on its website. (*Id.*)

156. Before the State Election Board adopted the rules and regulations, it posted those rules and regulations for comment. (July 12, 2006, Hr'g Tr. at 39, 70.)

157. The State Election Board drafted a letter to give to voters who came to vote in-person during the July 18, 2006, primary election that described the requirements of the 2006 Photo ID Act and explained where to obtain a Voter ID card. (July 12, 2006, Hr'g Tr. at 71-72.) The State Election Board made that letter available to any organization that wished to distribute the letter; however, no testimony indicated that any organization had distributed the letter. (*Id.* at 76.)

158. The State Election Board received some comments concerning the content of the letter and its readability during the hearing in which the State Election Board approved the letter. (July 12, 2006, Hr'g Tr. at 115, 133-34.) The State Election Board did not ask a literacy expert to review the letter to determine whether the average Georgia voter can read and understand the letter. (*Id.*)

159. The letter to be provided to voters during the July 2006 primary instructed the voters that they could vote a provisional ballot if they lacked a Photo ID. (Pls.' Ex. 12.) The letter to be provided to voters at the polls during the July 2006 primary did not contain a statement informing voters who voted

provisional ballots that they had to return with a Photo ID within forty-eight hours to have their provisional ballots counted. (*Id.*) Instead, the State intended to have poll workers give verbal instructions concerning the forty-eight hour requirement to voters who receive provisional ballots. (July 12, 2006, Hr'g Tr. at 134.)

160. Prior to the July 2006 primary, the State Election Board made information concerning the process and requirements for obtaining Voter ID cards available to local registrars, and placed that information on its website. (July 12, 2006, Hr'g Tr. at 72.)

161. Prior to the July 2006 primary, the State Election Board also used television and radio paid public service announcements ("PPSAs") to inform voters of the Photo ID requirement and the process and locations for obtaining Voter ID cards. (July 12, 2006, Hr'g Tr. at 73-74.)

162. The television PPSAs that ran prior to the July 2006 primary elections were thirty-second advertisements that ran on channels that were members of the Georgia Association of Broadcasters. (July 12, 2006, Hr'g Tr. at 110-11.) The total number of Voter ID cards issued increased after the State Election Board began running its PPSAs. (*Id.*)

163. The radio PPSAs that ran prior to the July 2006 primary ran on the Clear Channel network, which consists of 115 radio stations in Georgia. (July 12, 2006, Hr'g Tr. at 110-11, 132-33.) The network has a total estimated listening population of 900,000, including individuals who reside in neighboring states. (*Id.* at 111.) Some of the radio PPSAs that ran prior to the July 2006 primary aired very early on Saturday and Sunday mornings. (*Id.*)

164. After the Court issued its July 14, 2006, Order, the State Election Board discontinued its voter education efforts with respect to the 2006 Photo ID Act. (Sept. 14, 2006, Hr'g Tr. at 24.)

165. On September 1, 2006, the State Election Board held a meeting that addressed, among other things, voter education efforts for the 2006 Photo ID Act. (Sept. 14, 2006, Hr'g Tr. at 30-31.)

166. At the September 1, 2006, meeting, the State Election Board approved a letter to be mailed to approximately 305,000 voters listed on the DDS match report created in August or September 2006. (Sept. 14, 2006, Hr'g Tr. at 31.)

167. On September 13, 2006, the State Election Board began to mail that letter directly to those 305,000 voters, mailing 30,000 letters each day. (Sept. 14, 2006, Hr'g Tr. at 32-33, 54-56.)

168. On or about September 13, 2006, the Elections Division of the Secretary of State's Office sent a memorandum to county registrars that attached the letter mailed to the voters and that requested that the registrars also distribute the letter. (Sept. 14, 2006, Hr'g Tr. at 36-37.)

169. In September 2006, the State Election Board also adopted a voter education program for the 2006 Photo ID Act. (Sept. 14, 2006, Hr'g Tr. at 33-34.) The plan called for the State Election Board to distribute the letter mailed to voters to counties, local civic groups, churches, and other interested groups for further distribution. (*Id.* at 35-36, 57.) The plan also called for the State Election Board to resume running the PPSAs, and to develop an e-mail list to distribute the letter mailed to voters. (*Id.* at 37-38.) The plan also called for the State Election Board to provide the list of voters who purportedly lack Georgia driver's licenses or Georgia Photo ID cards

to local political parties and candidates, and to telephone the individuals on the list. (*Id.*) Finally, the plan called for the State Election Board to produce a brochure concerning the 2006 Photo ID Act's requirements, for distribution through the Elections Division of the Secretary of State's Office. (*Id.*)

170. The State Election Board placed information concerning the 2006 Photo ID Act's requirements on the Secretary of State's website, and individuals who visited that website could access information through a link. (Sept. 14, 2006, Hr'g Tr. at 39-40.)

171. Although the State Election Board developed a list of organizations to which it planned to distribute the letter to be mailed to certain voters in September 2006, and the letter that it planned to distribute at the polls in July 2006, it had not distributed the letters to those organizations as of September 14, 2006. (Sept. 14, 2006, Hr'g Tr. at 41-43, 48.)

172. Further, the State Election Board found that it lacked sufficient funding in September 2006, to telephone each of the approximately 305,000 Georgia voters who purportedly lacked a Georgia driver's license or Georgia Photo ID card. (Sept. 14, 2006, Hr'g Tr. at 43.)

173. The State Elections Board approved a brochure concerning the Photo ID requirement to be distributed by the Elections Division of the Secretary of State's Office; however, that brochure had not been distributed as of September 14, 2006. (Sept. 14, 2006, Hr'g Tr. at 43-44.)

174. On September 5, 2006, the State Election Board resumed running PPSAs on television stations. (Sept. 14, 2006, Hr'g Tr. at 37.)

175. On September 6, 2006, the State Election Board resumed running PPSAs on radio stations. (Sept. 14, 2006, Hr'g Tr. at 37-38, 60-61.) The PPSAs ran on the same radio stations on which the PPSAs aired before the July 2006 primary elections. (*Id.*)

176. In February 2007, Secretary of State Handel's office began discussing a plan to educate voters concerning the Photo ID requirement. (Aug. 23, 2007, Trial Tr. at 134.)

177. Secretary of State Handel's office eventually developed such an education plan. (State Defs.' Ex. 1; Aug. 22, 2007, Trial Tr. at 149; Aug. 23, 2007, Trial Tr. at 132.)

178. The education plan includes three phases: (1) July 2007 through September 2007, which will focus on the September 18, 2007, elections and educating the voters in the twenty-three counties affected by those elections; (2) September 2007 through November 2007, which will focus on educating voters in counties that are holding elections on November 6, 2007; and (3) November 2007 through February 2008, which will focus on educating voters across the state. (State Defs.' Ex. 1; Aug. 22, 2007, Trial Tr. at 149-50; Aug. 23, 2007, Trial Tr. at 135.

179. Although Secretary of State Handel's office has demographic information about voters, including age, gender, and race information, Secretary of State Handel's office did not take that information into account in developing the education plan. (Aug. 22, 2007, Trial Tr. at 119-20, 159.) According to Secretary of State Handel, she intended to reach out to as many voters as possible. (*Id.* at 119-20.)

180. Robert Simms, Deputy Secretary of State, testified that the Secretary of State's Office will measure the success of its voter education plan, in

part, by determining whether counties are able to conduct elections in a fair, efficient, and successful manner and whether the counties comply with applicable State laws. (Aug. 22, 2007, Trial Tr. at 145, 151-54; Aug. 23, 2007, Trial Tr. at 133.) Mr. Simms further testified that the Secretary of State's Office also will measure the success of its voter education plan by determining whether more people obtain Voter ID cards, vote absentee, or vote provisional ballots that are counted, and by determining whether voters who choose to participate in elections are able to do so. (Aug. 22, 2007, Trial Tr. at 152; Aug. 23, 2007, Trial Tr. at 133.)

181. Secretary of State Handel's office's budget for educating voters is $500,000 for fiscal year 2008, which runs from July 1, 2007, through June 30, 2008. (Aug. 22, 2007, Trial Tr. at 131.) As of August 24, 2007, Secretary of State Handel's office had spent between $123,000 and $125,000 on the Photo ID education effort. (Aug. 23, 2007, Trial Tr. at 150.)

182. Secretary of State Handel testified that she will have an opportunity in January 2008 to ask for additional voter education funds if her office determines that such funds are necessary. (Aug. 22, 2007, Trial Tr. at 131; Aug. 24, 2007, Trial Tr. at 27.) At this point, Secretary of State Handel plans to request more voter education funds, and believes that her request will be granted. (Aug. 22, 2007, Trial Tr. at 131.) In the event that the request for additional funds is denied, or in the event that Secretary of State Handel's office uses all of the $500,000 funds prior to January 2008, Secretary of State Handel plans to adjust her budget to make funds available for the Photo ID education effort. (Aug. 24, 2007, Trial Tr. at 26.)

183. Secretary of State Handel's office developed a letter, dated August 8, 2007, to mail to the voters in the counties holding elections on September 18, 2007, who appeared on the DDS no match list. (Aug. 22, 2007, Trial Tr. at 106; State Defs.' Ex. 4; Pls.' Ex. 68.)

184. The August 8, 2007, letter states, in relevant part:

> Our records indicate that you are a registered voter who may not have a Driver's License or Photo ID card issued by the Georgia Department of Driver Services (DDS). As Georgia's Secretary of State, I would like to take this opportunity to provide you important information about voting procedures in Georgia.
>
> Georgia law requires registered voters to show photo identification when voting in person. This photo identification requirement applies to all September 18, 2007 Special Elections and all future elections. You are not required to include any identification when you vote absentee by mail.
>
> If you do not have a valid or expired, Driver's License or a Photo ID issued by Georgia DDS you can still use one of the following:
>
> - Any valid state or federal government issued Photo ID, including a free voter ID card issued by your county registrar or DDS

> - Valid U.S. passport
>
> - Valid employee photo ID from any branch, department, agency, or entity of the U.S. Government, Georgia, or any county, municipality, board, authority, or other entity of this state
>
> - Valid U.S. military photo ID
>
> - Valid tribal photo ID
>
> If you DO NOT have one of these forms of identification, you are eligible to receive a **FREE** Georgia voter identification card. To receive this voter identification card, please contact any DDS office or your county registrar's office ...
>
> For more information, you can call **1(877)725-9797.** Or, please visit our website at **www. Ga Photo ID. com** or call our office at **(404)656-2871.**

(Pls.' Ex. 68 (emphasis in original); State Defs.' Ex. 4 (same).) The letters provide the address and phone number for the voter's county registrar's office. (Pls.' Ex. 68; State Defs.' Ex. 4.)

185. Secretary of State Handel's office did not have the August 8, 2007, letter reviewed by a literacy expert prior to mailing it. (Aug. 22, 2007, Trial Tr. at 162-63.)

186. Secretary of State Handel's office did not hire a literacy expert to examine the August 8, 2007, letter, partly because the office had only limited

funds for the voter education initiative. (Aug. 23, 2007, Trial Tr.)

187. The August 8, 2007, letter originally was mailed to the voters in twenty-two counties who appeared on the DDS match as a no-match, as having a suspended, canceled, surrendered, or revoked license, or as being not licensed or denied a license. (Aug. 22, 2007, Trial Tr. at 108, 156-57; Aug. 23, 2007, Trial Tr. at 141-43.)

188. During the week of August 15, 2007, Secretary of State Handel's office mailed the August 8, 2007, letter to voters in the twenty-two counties who appeared on the DDS match as having an expired DDS-issued Photo ID card; however, the letter was not mailed to voters in the twenty-two counties who appeared on the DDS match as having expired Georgia driver's licenses. (Aug. 22, 2007, Trial Tr. at 109-112; Aug. 23, 2007, Trial Tr. at 143.) An expired Georgia driver's license is an acceptable form of Photo ID for purposes of the 2006 Photo ID Act. (Aug. 22, 2007, Trial Tr. at 158; Aug. 23, 2007, Trial Tr. at 173.)

189. During the week of August 17 through August 20, 2007, Secretary of State Handel's office also sent a copy of the August 8, 2007, letter to Berrien County, Georgia, voters who appeared on a DDS data match run for that county as being a no-match, as having a suspended, canceled, surrendered, or revoked license, or as being not licensed or denied a license. (Aug. 22, 2007, Trial Tr. at 158; Aug. 23, 2007, Trial Tr. at 144-45.)

190. Secretary of State Handel's office has developed a brochure addressing the Photo ID requirement that the office plans to mail before the September 18, 2007, elections, to the voters who

received the August 8, 2007, letter. (Aug. 22, 2007, Trial Tr. at 162.)

191. Secretary of State Handel's office did not have the brochure document reviewed by a literacy expert. (Aug. 22, 2007, Trial Tr. at 162.)

192. Secretary of State Handel's office also developed a postcard that the office plans to send to the voters who were sent the August 8, 2007, letter. (Aug. 23, 2007, Trial Tr. at 147-48; State Defs.' Ex. 13.) Secretary of State Handel's office plans to mail the postcards to voters during the week of September 3, 2007. (Aug. 23, 2007, Trial Tr. at 148.)

193. Further, Secretary of State Handel's office developed an updated Georgia Voter Information Guide that includes information concerning the Photo ID requirement. (State Defs.' Ex. 3; Aug. 23, 2007, Trial Tr. at 217-18.)

194. Secretary of State Handel's office also developed a flyer that includes information about the Photo ID requirement. (State Defs.' Ex. 14.) The flyer also is available in a poster format. (State Defs.' Ex. 15.)

195. Secretary of State Handel's office also plans to make automated telephone calls to the voters who were mailed the August 8, 2007, letter. (Aug. 23, 2007, Trial Tr. at 149.)

196. Secretary of State Handel's office also purchased paid radio advertisements concerning the Photo ID requirement for the weeks of August 13, August 20, and August 27, and contemplated purchasing radio advertisements for later weeks. (Aug. 22, 2007, Trial Tr. at 160, 174; Aug. 23, 2007, Trial Tr. at 158; State Defs.' Ex. 26.)

197. The paid radio advertisements have run, and are scheduled to run, on the Clear Channel

Network, which includes certain traffic reports, as well as the Georgia News Network. (Aug. 22, 2007, Trial Tr. at 174-75; State Defs.' Ex. 26; Aug. 23, 2007, Trial Tr. at 158; Aug. 24, 2007, Trial Tr. at 11.) Secretary of State Handel's office chose the Clear Channel Network, in part, because that network already has a contract with the State of Georgia, and using the network would allow Secretary of State Handel's office to bypass the often-lengthy State procurement process. (Aug. 24, 2007, Trial Tr. at 11.)

198. The paid radio advertisements are concentrated to cover the area that includes twenty-two of the counties that are holding elections on September 18, 2007. (Aug. 22, 2007, Trial Tr. at 174-75; Pls.' Ex. 117.)

199. Secretary of State Handel's office did not perform a demographic analysis of the listening audience for the radio stations that are to run the paid radio advertisements, and did not measure the audience of those radio stations within the areas of the twenty-three counties that are holding September 18, 2007, elections. (Aug. 22, 2007, Trial Tr. at 174-75.)

200. Secretary of State Handel's office had planned to run unpaid public service announcements ("PSAs") prior to the September 18, 2007, elections; however, no such PSAs had run as of the date of the trial. (Aug. 22, 2007, Trial Tr. at 180; Aug. 24, 2007, Trial Tr. at 10.)

201. Secretary of State Handel's office has not purchased television or billboard advertisements addressing the Photo ID requirement to run prior to September 18, 2007. (Aug. 22, 2007, Trial Tr. at 160; Aug. 24, 2007, Trial Tr. at 12.)

202. The voter education plan developed by Secretary of State Handel's office also includes asking nongovernmental organizations and chambers of commerce to partner with the office in getting information concerning the Photo ID requirement to voters. (Aug. 23, 2007, Trial Tr. at 153-54.)

203. Secretary of State Handel's office sent a letter requesting assistance in notifying voters about the Photo ID requirement to a number of nongovernmental organizations in the twenty-three counties who are holding elections in September 2007. (Aug. 23, 2007, Trial Tr. at 150-52; State Defs.' Exs. 5-6.)

204. Secretary of State Handel's office has received responses to the letter sent to the nongovernmental organizations that include requests for materials, and has provided materials to the requesters for distribution. (Aug. 23, 2007, Trial Tr. at 152, 155.) The materials included for distribution include the Voter ID brochure and flyer. (*Id.* at 152.)

205. Secretary of State Handel's office has provided the Voter ID brochure, the flyer, and the poster to the registrars for twenty-two of the counties that are holding September 18, 2007, elections, and will mail those materials to the registrars in other counties. (Aug. 23, 2007, Trial Tr. at 153; Aug. 24, 2007, Trial Tr. at 8.) Secretary of State Handel's office also has provided those materials to some registrars in person. (Aug. 23, 2007, Trial Tr. at 153.)

206. Secretary of State Handel's office also wrote a letter to the libraries located in the twenty-three counties that are holding September 18, 2007, elections. (Aug. 23, 2007, Trial Tr. at 154-55; State Defs.' Exs. 11-12.) Secretary of State Handel's office

enclosed materials relating to the Photo ID requirement with those letters. (Aug. 23, 2007, Trial Tr. at 155; Aug. 24, 2007, Trial Tr. at 7.)

207. Secretary of State Handel's office requested that Governor Sonny Perdue also speak about the Photo ID requirement. (Aug. 23, 2007, Trial Tr. at 220.)

208. Secretary of State Handel's office also sent a letter to all of the members of the Georgia General Assembly who represent constituents in the twenty-three counties that plan to hold September 18, 2007, elections, requesting that those legislators assist in informing voters of the Photo ID requirement. (Aug. 23, 2007, Trial Tr. at 155-56, 220.)

209. The 2006 Photo ID Act also has been the subject of numerous newspaper articles and television news reports.

210. Additionally, Secretary of State Handel's office has written editorials and articles, which the office has provided to newspapers in the twenty-three counties that are holding September 18, 2007, elections. (Aug. 23, 2007, Trial Tr. at 168-70; Aug. 24, 2007, Trial Tr. at 13-14.)

211. Further, Secretary of State Handel's office contacted representatives from several utility companies, and requested that the utility companies include information about the Photo ID requirement in their bills. (Aug. 23, 2007, Trial Tr. at 156-57; State Defs.' Ex. 18.) SCANA, a gas marketer that operates throughout Georgia, has agreed to include that information on its bills. (Aug. 23, 2007, Trial Tr. at 157.)

212. Secretary of State Handel's office also created a website for the Voter ID requirement, www. gaphotoid. com. (Aug. 23, 2007, Trial Tr. at 159; Aug. 24, 2007, Trial Tr. at 12; State Defs.' Ex. 25.)

That website contains information pertaining to the Photo ID requirement, and is accessible both directly by typing in the website address or via a link from the Secretary of State's webpage. (Aug. 23, 2007, Trial Tr. at 159; Aug. 24, 2007, Trial Tr. at 13.) The website began operating during the first week of August 2007. (Aug. 23, 2007, Trial Tr. at 161.)

213. Secretary of State Handel's office also presented information concerning the Photo ID requirement and the process for issuing Voter ID cards to the county registrars during a state-wide, mandatory registrar training held on August 13 through August 15, 2007. (Aug. 23, 2007, Trial Tr. at 161-62; Aug. 24, 2007, Trial Tr. at 15-19; State Defs.' Exs. 27, 29-30.) Additionally, Secretary of State Handel's office plans to hold additional training for registrars between September 2007 and December 2007, and to make on-line training available to registrars. (Aug. 23, 2007, Trial Tr. at 162.) The registrars, in turn, are responsible for training poll workers. (Aug. 23, 2007, Trial Tr. at 163.)

214. Secretary of State Handel also is scheduled to speak to voters concerning the Photo ID requirement prior to the September 18, 2007, elections. (Aug. 24, 2007, Trial Tr. at 14.) Secretary of State Handel's appearances prior to the September 18, 2007, elections primarily will target voters in the twenty-three counties that are holding the September elections. (*Id.*)

215. According to Secretary of State Handel, her office began distributing educational materials to voters at the optimal time-approximately six weeks prior to the September 18, 2007, elections-as the educational efforts will lead up to the September 18,

2007, elections and provide a sense of urgency. (Aug. 24, 2007, Trial Tr. at 46.)

6. Obtaining a Voter ID Card

216. The State purchased equipment to create Voter ID cards. (July 12, 2006, Hr'g Tr. at 67; Sept. 14, 2006, Hr'g Tr. at 46.) The State selected a vendor for the equipment, and the equipment was installed in all of Georgia's 159 counties. (July 12, 2006, Hr'g Tr. at 67.)

217. Registrars received training concerning the Voter ID card equipment during the Georgia Registrars Convention held in May 2006. (July 12, 2006, Hr'g Tr. at 67.) Twenty to thirty counties also requested, and received, individual training from the vendor of the equipment. (*Id.*)

218. Counties began issuing Voter ID cards during June or July 2006. (July 12, 2006, Hr'g Tr.) As of July 12, 2006, Georgia counties had issued a total of 420 Voter ID cards, 109 of which were issued by Atlanta metropolitan area counties. (*Id.*)

219. Counties issue a temporary Voter ID card to voters on the day that the voters appear to request the Voter ID card. (July 12, 2006, Hr'g Tr. at 68-69; Aug. 22, 2007, Trial Tr. at 122-23.) The temporary Voter ID cards are valid for forty-five days. (July 12, 2006, Hr'g Tr. at 68-69.) The vendor is responsible for mailing permanent Voter ID cards to the voters, and usually does so within three days after the voters request the cards. (*Id.*) The counties may issue an unlimited number of temporary Voter ID cards, and the counties have supplies of applications for the Voter ID cards. (*Id.* at 69.)

220. The State contracted with the vendor of the Voter ID card equipment for the vendor to provide 10,000 Voter ID cards. (July 12, 2006, Hr'g Tr. at

123.) The State's contract with the vendor, however, provides that the State may purchase additional Voter ID cards if necessary. (July 12, 2006, Hr'g Tr. at 123; Aug. 24, 2007, Trial Tr. at 31.) If the State needs to purchase additional Voter ID cards, Secretary of State Handel's office will pay for the purchase. (Aug. 24, 2007, Trial Tr. at 31.)

221. The State Election Board's rules and regulations specify the hours that registrars' offices must remain open. (Aug. 22, 2007, Trial Tr. at 114-15.) The rules and regulations specifically require that the registrars' offices remain open from eight a.m. to five p.m. on the Monday through Friday during the week prior to an election. (*Id.*) No provision exists requiring the offices to be open at night, on weekends, or on holidays. (*Id.* at 115.)

222. Under the State Election Board's rules and regulations, a voter may present his or her voter registration application as a form of identification in order to obtain a Voter ID card from a county registrar. (July 12, 2006, Hr'g Tr. at 23, 26-27.) To register to vote, an individual need not provide a social security number, and is not required to provide any other identifying documentation, including a Photo ID. (July 12, 2006, Hr'g Tr. at 23-24, 26-27; Aug. 22, 2007, Trial Tr. at 93, 96.) A voter thus could register to vote, provide his or her voter registration application to the registrar, and, once his or her voter registration application is accepted, obtain a Voter ID card, all without showing any other form of identifying information. (July 12, 2006, Hr'g Tr. at 23-24, 26-27; Aug. 22, 2007, Trial Tr. at 96.) In theory, a voter who registered fraudulently several years ago now may use his or her fraudulent voter registration application to obtain a Voter ID

card, which he or she may use to vote in person. (July 12, 2006, Hr'g Tr. at 24, 27.)

223. A voter also may use other non-Photo ID documents to obtain a voter identification card. (July 12, 2006, Hr'g Tr.)

224. Former Secretary of State Cox testified that the process of obtaining a Voter ID card is an additional step that an individual must go through to vote in person. (July 12, 2006, Hr'g Tr. at 28.) To that extent, the Voter ID card process could serve as a deterrent to fraud. (*Id.*)

225. As of 5:00 p.m. on September 13, 2006, the State of Georgia had issued 953 Voter ID cards. (Sept. 14, 2006, Hr'g Tr. at 46.)

192. Through July 2007, the State of Georgia had issued 2,830 total Voter ID cards through the registrars' offices. (Aug. 22, 2007, Trial Tr. at 151.) Between August 1, 2007, and August 23, 2007, the State of Georgia issued 198 additional Voter ID cards through the registrars' offices. (Aug. 24, 2007, Trial Tr. at 21.)

E. Expert Testimony

1. Dr. Sheryl Gowen

The State Defendants moved to exclude Dr. Sheryl Gowen's expert testimony, arguing that Dr. Gowen was not qualified to offer that testimony, and that Dr. Gowen's opinions did not satisfy *Daubert's* relevance and reliability requirements. For the reasons stated in the Court's separate Order addressing the State Defendants' Motion to Exclude Reports and Testimony of Plaintiffs' Experts, the Court agrees with the State Defendants that Dr. Gowen's opinions and testimony fail to satisfy

Daubert and have little, if any, relevance to the issues before the Court. The Court therefore does not consider those opinions and testimony.

2. Dr. Trey Hood

The State Defendants also moved to exclude Dr. Trey Hood's expert testimony, arguing that Dr. Hood was not qualified to offer that testimony, and that Dr. Hood's opinions did not satisfy *Daubert's* relevance and reliability requirements. For the reasons stated in the Court's separate Order addressing the State Defendants' Motion to Exclude Reports and Testimony of Plaintiffs' Experts, the Court agrees with the State Defendants that Dr. Hood's opinions and testimony fail to satisfy *Daubert,* and, for the most part, are irrelevant to the issues before the Court. The Court therefore does not consider those opinions and testimony.

III. Conclusions of Law

A. Standing

1. "Article III of the United States Constitution limits the power of federal courts to adjudicating actual 'cases' and 'controversies.' " *Nat'l Alliance for the Mentally Ill, St. Johns, Inc. v. Bd. of County Comm'rs of St. Johns County,* 376 F.3d 1292, 1294 (11th Cir.2004). "The most significant case-or-controversy doctrine is the requirement of standing." *Id.* " 'In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.' " *Id.* (quoting *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)).

2. To satisfy the standing requirement, a party must show: (1) that he has suffered an injury in fact; (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) that it is likely, as opposed to merely speculative, that the injury "will be 'redressed by a favorable decision.' " *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 883 (11th Cir.2000).

3. "An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). To possess standing, however, an organizational plaintiff must show that one of its constituents otherwise has standing to sue. *Doe v. Stincer,* 175 F.3d 879, 882 (11th Cir.1999); *see also Nat'l Alliance for the Mentally Ill,* 376 F.3d at 1296 (noting, with respect to organizational plaintiffs, that failure to identify injured constituent prevented organizational plaintiffs from asserting associational standing).

4. The party invoking federal jurisdiction bears the burden of showing that it has standing to assert its claim. *Fla. Pub. Interest Research Group Citizen Lobby, Inc. v. Envtl. Prot. Agency,* 386 F.3d 1070, 1083 (11th Cir.2004). The party asserting that it has standing must support each element of the standing showing " 'in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.' " *Id.* (quoting

Bischoff, 222 F.3d at 878). Thus, in connection with a motion to dismiss, a party may simply " provide 'general factual allegations of injury resulting from the defendant's conduct.' " *Id.* (quoting *Bischoff,* 222 F.3d at 878). Similarly, in connection with a request for a preliminary injunction, a party's standing may be judged based on the allegations of the party's complaint. *Bischoff,* 222 F.3d at 882 n. 8 (citing *Church v. City of Huntsville,* 30 F.3d 1332, 1336 (11th Cir.1994)). At the summary judgment stage, however, a plaintiff may not simply rest on mere allegations, but instead " 'must set forth by affidavit or other evidence specific facts which for purposes of the summary judgment motion will be taken to be true.' " *Id.* (quoting *Bischoff,* 222 F.3d at 878).

5. Given the above standard, during the trial on the merits, the organizational Plaintiffs were required to come forth with evidence showing that they each had at least one member who otherwise would have standing to sue in his own right, or that the organizations had standing independent of their membership. *Stincer,* 175 F.3d at 882. As Plaintiffs acknowledged at trial, all of the organizational Plaintiffs except Plaintiff NAACP failed to make that showing. Consequently, the Court need only examine whether Plaintiff NAACP has presented sufficient evidence to establish that it has standing.

6. Plaintiff NAACP first argues that it has standing to sue on behalf of its members. As the Court previously concluded, Plaintiff Eugene Taylor's testimony as to whether he is a member of Plaintiff NAACP is not credible. Plaintiff NAACP consequently cannot establish standing based on Plaintiff Eugene Taylor's membership.

7. Further, although Mr. DuBose testified that he was generally aware of at least five individuals who

would be affected by the Photo ID requirement, Mr. DuBose did not provide the names of those individuals, or even indicate whether those individuals actually were members of Plaintiff NAACP. Mr. DuBose's testimony consequently does not satisfy Plaintiff NAACP's burden to identify a member who otherwise would have standing to sue in his or her own right. *Stincer,* 175 F.3d at 882. Consequently, Plaintiff NAACP does not have standing to sue based on an injury to its members. *See also Ind. Democratic Party v. Rokita,* 458 F.Supp.2d 775, 815-16 (S.D.Ind.2006), *aff'd,* 472 F.3d 949 (7th Cir.2007), *pet'n for cert. filed,* No. 07-25 (U.S. July 2, 2007) (finding organizational plaintiffs lacked standing to sue on behalf of members where organizational plaintiffs failed to identify single member who did not already possess required photo identification or have injury beyond mere offense at having to present photo identification in order to vote).

8. Alternatively, Plaintiff NAACP argues that it has standing to sue in its own right, based on the possibility that it may have to re-allocate resources to educate its members concerning the Photo ID requirement and to ensure that its members who lack Photo ID cards obtain those. In support of this argument, Plaintiff NAACP cites to *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982), and *Central Alabama Fair Housing Center, Inc. v. Lowder Realty Co.,* 236 F.3d 629 (11th Cir.2000). Both *Havens Realty* and *Central Alabama Fair Housing Center,* however, are Fair Housing Act cases, which involve special sets of circumstances. *Rokita,* 458 F.Supp.2d at 815-16. Plaintiff NAACP simply has not demonstrated that the United States Court of Appeals for the Eleventh

Circuit would extend the standing analysis applied in those Fair Housing Act cases outside the context of housing discrimination, and the Court therefore declines to do so here. *Id.*

9. Additionally, Plaintiff NAACP, like the organizational plaintiffs in *Rokita,* failed to show that it already has expended resources in connection with the Photo ID requirement, but instead simply presented testimony indicating that at some undetermined time in the future, it may have "to divert unspecified resources to various outreach efforts." *Rokita,* 458 F.Supp.2d at 816. As the *Rokita* court noted, "[s]uch imprecise and speculative claims concerning potential future actions designed to combat speculative discrimination are a far cry from the kind of organizational expenditures found to convey standing in *Havens.*" *Id.* The Court therefore declines to apply *Havens* and its progeny to conclude that Plaintiff NAACP has standing to sue in its own right.

10. Further, the Court finds that, like the organizational plaintiffs in *Rokita,* any injury that Plaintiff NAACP would suffer would be of its own making. *Rokita,* 458 F.Supp.2d at 816-17. Indeed, as the *Rokita* court noted:

> [T]he claimed injury suffered by the Organization Plaintiffs is entirely of their own making since any future reallocation of resources would be initiated at the Organization Plaintiffs' sole and voluntary discretion. Such an optional programming decision does not confer Article III standing on a plaintiff. As the D.C. Circuit observed: "The diversion of resources ... might well

> harm the [plaintiff's] other programs, for money spent on testing is money that is not spent on other things. But this particular harm is self-inflicted; it results not from any actions taken by [defendant], but rather from the [plaintiff's] own budgetary choices."

Id. (quoting *Fair Employment Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C.Cir.1994)).

11. Additionally, the Court agrees with the *Rokita* court that

> [T]he interpretation of *Havens* proffered by [Plaintiff NAACP], if accepted, would completely eviscerate the standing doctrine. If an organization obtains standing merely by expending resources in response to a statute, then Article III standing could be obtained through nothing more than filing a lawsuit. Such an interpretation flies in the face of well-established standing principles. Indeed, "[a]n organization cannot, of course, manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit. Were the rule otherwise, any litigant could create injury in fact by bringing a case, and Article III would present no real limitation."

Rokita, 458 F.Supp.2d at 817 (quoting *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C.Cir.1990)).

Consequently, the Court declines to find that Plaintiff NAACP has standing to pursue this case.

12. For the reasons discussed above, the Court finds that Plaintiff NAACP has failed to establish that it has standing to sue on behalf of its members, or that it has standing to sue in its own right. Consequently, Plaintiff NAACP may not pursue this lawsuit.

13. Additionally, for the following reasons, the Court finds that the individual Plaintiffs, Plaintiff Bertha B. Young and Plaintiff Eugene Taylor, also have failed to demonstrate that they have standing.

14. First, although Plaintiff Bertha B. Young lacks a Photo ID that is acceptable for purposes of the 2006 Photo ID Act, she testified unequivocally that she can and will obtain a Photo ID card from her local registrar if the Court upholds the Photo ID requirement. Plaintiff Bertha B. Young further testified that she can go to her registrar's office, which is approximately two miles away from her house, by taking a bus. Although Plaintiff Bertha B. Young contends that the bus ride would take approximately one hour, she also testified that her sons and friends often drive her places. Indeed, Plaintiff Bertha B. Young uses a bank across town, and her friends or family members drive her there. Under those circumstances, the Court simply cannot find that requiring Plaintiff Bertha B. Young to obtain a Photo ID card will impose a significant burden on her, or that Plaintiff Bertha B. Young has shown, by a preponderance of the evidence, that she has suffered, or is in imminent danger of suffering, an injury in fact because of the 2006 Photo ID Act. In particular, Plaintiff Bertha B. Young has not shown that she has suffered "an invasion of a legally protected interest which is (a) concrete and

particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (quotation marks and citations omitted). Plaintiff Bertha B. Young therefore lacks standing to pursue this lawsuit.

15. Similarly, Plaintiff Eugene Taylor testified that he has not voted since sometime in the 1980s, and that, if the Court upholds the Photo ID requirement, he can and will get a Photo ID card from his local registrar to allow him to vote. Plaintiff Eugene Taylor testified that his daughter will drive him to get the Photo ID card, and the evidence in the record indicates that Plaintiff Eugene Taylor's local registrar's office is approximately the same distance from Plaintiff Eugene Taylor's home as is his polling place. Consequently, the Court cannot find that Plaintiff Eugene Taylor is in danger of suffering "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan,* 504 U.S. at 560, 112 S.Ct. 2130 (quotation marks and citations omitted). Further, although Plaintiff Eugene Taylor contends that his daughter may have to take off time from work to take him to the registrar's office, Plaintiff Eugene Taylor has not demonstrated that he will suffer any harm from his daughter taking off from work, and he may not use any alleged injury to his daughter from missing work to support his own claim of standing. Plaintiff Eugene Taylor therefore lacks standing to pursue this action.

16. In sum, the Court finds that Plaintiffs have failed to prove, by a preponderance of the evidence, that they have standing to pursue this action. The Court therefore may not entertain this case.

Consequently, the Court need not address Plaintiffs' substantive challenge to the 2006 Photo ID Act. In an abundance of caution, however, the Court will address the merits of that challenge.

B. Undue Burden[5]

1. Standard for Obtaining a Permanent Injunction

17. A court may grant a preliminary injunction "only if the moving party shows that: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir.2004) (quoting *Siegel v. LePore,* 234 F.3d 1163, 1176 (11th Cir.2000)) (en banc) (per curiam). " 'The standard for a permanent injunction is essentially the same as for a preliminary injunction except that the plaintiff must show actual success on the merits instead of a likelihood of success.' " *Id.* (quoting *Siegel,* 234 F.3d at 1213). Additionally, "most courts do not consider the public interest element in deciding whether to issue a permanent injunction." *Id.*

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[5] During closing arguments, Plaintiffs' counsel apparently contended that the 2006 Photo ID Act burdens voters' right to freedom of association. Plaintiffs, however, did not allege in their Second Amended Complaint that the 2006 Photo ID Act violated the First Amendment or otherwise violated voters' right to freedom of association. Plaintiffs consequently may not assert such a claim at this time.

18. A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. " '[P]reliminary injunctions of legislative enactments-because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits-must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.' " *Bankwest, Inc. v. Baker,* 324 F.Supp.2d 1333, 1343 (N.D.Ga.2004) (quoting *Ne. Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville,* 896 F.2d 1283, 1285 (11th Cir.1990)).

2. Success on the Merits

19. The Supreme Court has made it clear that voting is a fundamental right, *Burdick v. Takushi,* 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992), under the Fourteenth Amendment in the context of equal protection, *Kramer v. Union Free Sch. Dist. No. 15,* 395 U.S. 621, 629, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969).

20. Indeed, in *Wesberry v. Sanders,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), the Court observed:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

376 U.S. at 17-18, 84 S.Ct. 526.

21. Similarly, in *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), the Court stated:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

377 U.S. at 561-62, 84 S.Ct. 1362.

22. "[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein,* 405 U.S. 330, 336, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

23. The equal right to vote, however, is not absolute. *Dunn,* 405 U.S. at 336, 92 S.Ct. 995.

24. Instead, states can impose voter qualifications and can regulate access to voting in other ways. *Dunn,* 405 U.S. at 336, 92 S.Ct. 995.

25. Under the United States Constitution, states may establish the time, place, and manner of holding elections for Senators and Representatives. U.S. Const. art. I, § 4, cl. 1.

26. The qualifications and access regulations established by the states, however, cannot unduly burden or abridge the right to vote. *Tashjian v.*

Republican Party, 479 U.S. 208, 217, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) ("[T]he power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote.") (citing *Wesberry,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481); *see also Dunn,* 405 U.S. at 359-60, 92 S.Ct. 995 (striking down Tennessee's durational residency voting requirement of one year in state and three months in county); *Beare v. Briscoe,* 498 F.2d 244, 247-48 (5th Cir.1974) (invalidating provisions of Texas Constitution and implementing statute requiring persons who wished to vote in any given year to register each year during registration period beginning on October 1 and ending on January 31 of following year) (per curiam). In particular, the Supreme Court has observed that wealth or the ability to pay a fee is not a valid qualification for voting. *Harper v. Va. State Bd. of Elections,* 383 U.S. 663, 666-68, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (citations omitted; footnote omitted).

27. A number of Supreme Court cases have set forth standards for determining whether a state statute or regulation concerning voting violates the Equal Protection clause.

28. In *Dunn,* the Supreme Court stated that a court must examine: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn,* 405 U.S. at 335, 92 S.Ct. 995.

29. Another Supreme Court case indicates that the Court should " 'consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests

of those who are disadvantaged by the classification.' " *Kramer,* 395 U.S. at 626, 89 S.Ct. 1886.

30. Those cases apply strict scrutiny when examining state statutes or regulations that limit the right to vote. *Kramer,* 395 U.S. at 627, 89 S.Ct. 1886 ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."); *see also Hill v. Stone,* 421 U.S. 289, 298, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975) ("in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification").

31. In a more recent line of cases, the Supreme Court has not necessarily applied the strict scrutiny test automatically to regulations that relate to voting. *Burdick,* 504 U.S. at 433-34, 112 S.Ct. 2059; *Tashjian,* 479 U.S. at 213, 107 S.Ct. 544 (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)).

32. Indeed, the Supreme Court observed in *Burdick:*

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote and his right to associate with others for political ends. Consequently, to subject every voting regulation to strict scrutiny and to require

that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently." Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny."

Instead, ... a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the

> First and Fourteenth Amendment rights of voters, "the State's most important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 433-34, 112 S.Ct. 2059 (citations omitted).

33. The Court finds that the appropriate standard of review for evaluating the 2006 Photo ID Act is the *Burdick* sliding scale standard.

34. Under that standard, the Court must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights," *Burdick,* 504 U.S. at 433-34, 112 S.Ct. 2059.

a. The Asserted Injury

35. For the reasons discussed below, the Court finds that Plaintiffs simply have failed to prove that the character and magnitude of the asserted injury to the right to vote is significant. Although Plaintiffs contended at the preliminary injunction hearings that many voters who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a voter registrar's office or DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain Voter ID cards or Photo ID cards, or cannot travel to a registrar's office or a

DDS service center during those locations' usual hours of operation because the voters do not have transportation available, Plaintiffs failed to produce admissible evidence to that effect at trial. Indeed, the two named Plaintiffs both testified that they could and would travel to their local registrars' office to obtain a Photo ID card if the Court upheld the 2006 Photo ID Act, and their testimony, contrary to Plaintiffs' arguments, did not establish that either of the two named Plaintiffs would suffer an undue burden from traveling to the local registrar's office to obtain a Photo ID card. In particular, although the two named Plaintiffs testified that their children would have to take time off from work to take them to the registrar's office, the testimony in the record demonstrates that the two named Plaintiffs' children regularly take the two named Plaintiffs places, and that transportation may be available from other sources, including rides from friends. Additionally, although Plaintiff Bertha B. Young stated that her bus ride to the registrar's office would take one hour each way, she also testified that her friends could drive her, and it appears from the record that her friends and employer regularly transport her.

Similarly, Mr. Dewberry testified that he could walk one-quarter of a mile to the registrar's office to obtain a Voter ID card, and stated that obtaining a Voter ID card would not be a significant hardship for him. Consequently, the Court cannot find that the Photo ID requirement is unduly burdensome for Mr. Dewberry.

Likewise, Annie Johnson testified that she goes to Americus at least once a month, that her friends or family members drive her there, and that she would obtain a Voter ID card the next time she went to

Americus. This testimony fails to support Plaintiffs' contention that requiring Ms. Johnson to obtain a Voter ID card would unduly burden her right to vote.

Further, although Plaintiffs contended at the preliminary injunction hearing that many voters who lack an acceptable Photo ID for in-person voting are elderly, infirm, or poor, and lack reliable transportation to a DDS service center or a county registrar's office, the evidence in the record fails to support that contention. Even if the Court accepted Dr. Hood's testimony indicating that a higher percentage of the individuals who appear on the DDS no-match lists are elderly, or are African-American or other minorities, the testimony in the record established that the large numbers reported on the DDS no-match list were far from reliable.[6] Additionally, as previously noted, Plaintiffs proffered precious little admissible evidence showing that voters who lacked Photo ID had no transportation to a DDS office or a county registrar's office. Further, even if a voter's name appears on a DDS no-match list, the voter still may have some other form of acceptable Photo ID, and neither Dr. Hood's analysis nor the DDS no-match list purported to address that issue. Plaintiffs thus simply have not satisfied their burden of proving that the 2006 Photo ID Act unduly burdens minority or elderly voters.

36. Although Plaintiffs argue that the State's education efforts are irrelevant to the question of whether the 2006 Photo ID Act unduly burdens voters, the Court finds this argument unpersuasive.

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[6] The undersigned appeared on one of the no-match lists. (July 12, 2006, Hr'g Tr. at 78.)

The Court's earlier rulings on the preliminary injunction motions, which found that the Photo ID requirements in the 2006 Photo ID Act unduly burdened voters, hinged in large part on the fact that many of the voters who might lack a Photo ID had no real notice of the Photo ID requirement or of how to get a Photo ID or vote absentee. At the trial, however, the evidence revealed that the State made exceptional efforts to contact voters who potentially lacked a valid form of Photo ID issued by the DDS and who resided in the twenty-three counties that planned to hold September 18, 2007, elections, and to inform those voters of the availability of a Voter ID card, where to obtain additional information, and the possibility of voting absentee without a Photo ID.[7] The evidence in the record indicates that the State also provided information to voters in general by advertising on the Clear Channel radio network, and by partnering with libraries and nongovernmental organizations. Additionally, the Photo ID requirement has been the subject of many news reports, editorials, and news articles. Under those circumstances, Plaintiffs are hard-pressed to show that voters in Georgia, in general, are not aware of the Photo ID requirement.

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[7] Although Plaintiffs' counsel argued that the voter education materials provided by the State were misleading or did not provide sufficient information, the materials informed the voters of the Photo ID requirement for in-person voting, explained who was eligible for a free Voter ID card, invited voters to contact their local registrars or the Secretary of State for further information, provided a toll-free telephone number, and, in the August 8, 2007, letter, provided the address and telephone number for the voters' respective local registrar's offices. That information was sufficient to convey the necessary message to the voters.

Additionally, although Dr. Gowen opined that the Flesch-Kincaid readability score for the materials provided to the voters was so high that a large percentage of Georgia voters could not understand the materials, that testimony is irrelevant. As discussed in the Court's Order granting the State Defendants' Motion to Exclude, the materials as analyzed by Dr. Gowen differed in several significant respects from the materials as actually given to the voters.

37. Additionally, individuals who do not have an acceptable Photo ID for in-person voting can obtain an absentee ballot and vote absentee by mail without providing an excuse. Although Plaintiffs contend that the average Georgia voter cannot read and understand the absentee ballot request form, there is no requirement that a voter complete that form. Instead, a voter need only write his name, address, and date of birth on a piece of paper, indicate in which election he wishes to vote absentee, and mail the piece of paper to his registrar. If he cannot do this, or if he cannot complete the absentee ballot request form, he can obtain assistance from a family member. Similarly, if the voter cannot read and complete the absentee ballot, a family member can help him. The State thus has not, as Plaintiffs contend, completely barred voters who lack Photo ID from voting.

38. The Court acknowledges that in its previous Orders addressing the preliminary injunction motions, it concluded that the Photo ID requirement severely burdened voters. It is important to note, however, that the preliminary injunction motions were made at an earlier stage of the litigation and were made under more relaxed evidentiary standards. Here, however, Plaintiffs must actually

prove their contentions by a preponderance of the evidence, using evidence reduced to an admissible form. Plaintiffs have failed to do so here.

39. Additionally, the Orders on the preliminary injunction motions were written under factual backgrounds that differ significantly from the admissible evidence presented to the Court at trial. In the case of the 2005 Photo ID Act, voters had no alternative for obtaining a Photo ID except to go to the DDS service centers or the Glow Bus. The evidence at the time indicated that the Glow Bus ran only sporadically and could not have possibly traveled to all of Georgia's 159 counties in time for the relevant elections, and also indicated that the DDS service centers often had long lines and long wait times. Further, under the 2005 Photo ID Act, voters either had to pay for their Photo ID card to vote in-person or swear to an affidavit of indigency, perhaps falsely. Voters also might have been required to pay fees to obtain the documents necessary to obtain a Photo ID Card from DDS.

40. At the time of the July 12, 2006, and September 14, 2006, preliminary injunction hearings, the evidence indicated that the State had given voters a choice of obtaining a free DDS-issued Photo ID card for voting purposes or a free Voter ID card issued by their local registrars. Unfortunately, the evidence indicated that the State had begun voter education efforts only shortly prior to those hearings, and that the voter education efforts used by the State did not appear to be reasonably calculated to reach the voters who lacked Photo ID. The Court's primary concern in connection with those hearings was that voters likely would not have sufficient time to learn about the Photo ID requirement, to discover how to obtain a Photo ID,

and to travel to their respective DDS service centers or registrar's offices to obtain a Photo ID. Under those circumstances, the Court found that the Photo ID requirement was likely to cause voters without Photo ID to refrain from voting, and, consequently, the Photo ID requirement was an undue burden on the right to vote.

41. Here, however, the State has undertaken a serious, concerted effort to notify voters who may lack Photo ID cards of the Photo ID requirement, to inform those voters of the availability of free DDS-issued Photo ID cards or free Voter ID cards, to instruct the voters concerning how to obtain the cards, and to advise the voters that they can vote absentee by mail without a Photo ID. Although the State's educational effort may not be as extensive as Plaintiffs would like, the evidence demonstrates that the educational effort is reasonably calculated to inform voters of the change in the law and to inform voters what action they need to take. Additionally, the State's educational effort began sufficiently early to afford most voters who lack a Photo ID a reasonable opportunity to obtain one. The Court therefore finds that the 2006 Photo ID Act does not significantly burden the right to vote.

42. Similarly, at the time of the previous hearings, the State had not publicized no-excuse absentee voting by mail as an alternative to voting in person with a Photo ID. By the time of the trial, however, the State has reached out to voters to explain the availability of that option.

43. Plaintiffs appear to argue that the requirement of obtaining a Photo ID, in and of itself, significantly burdens the right to vote. The Court finds this argument unpersuasive. Indeed,

> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote and his right to associate with others for political ends."

Rokita, 458 F.Supp.2d at 821-22 (quoting *Anderson v. Celebrezze,* 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). Plaintiffs simply have not presented sufficient admissible evidence to show that the Photo ID requirement *severely* burdens the right to vote. Indeed, as the court noted in *Rokita:*

> Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the 2006 Photo ID Act] because of his or her inability to obtain the necessary photo identification. Similarly, Plaintiffs have failed to produce any evidence of any individual ... who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote.

Id. at 822-23. Additionally, although Plaintiffs claim to know of people who claim that they lack Photo ID, Plaintiffs have failed to identify those individuals. *Id.* at 823. The failure to identify those individuals "is particularly acute" in light of Plaintiffs' contention that a large number of Georgia voters lack acceptable Photo ID. *Id.* Further, although Plaintiffs Eugene Taylor and Bertha B. Young and Mr. Dewberry and Ms. Johnson state that they prefer to vote in person rather than voting absentee by mail, "this abrogation of their personal preferences is not a cognizable injury or hardship." *Id.* at 823 n. 71. As the *Rokita* court noted, voters who lack Photo ID undoubtedly exist somewhere, but the fact that Plaintiffs, in spite of their efforts, have failed to uncover anyone "who can attest to the fact that he/she will be prevented from voting" provides significant support for a conclusion that the Photo ID requirement does not unduly burden the right to vote. *Id.* at 823. Consequently, the Court declines to apply a strict scrutiny analysis to Plaintiffs' contentions.

b. State Interest

44. The State and the State Defendants assert that the 2006 Photo ID Act's Photo ID requirement is designed to curb voting fraud. " 'A state indisputably has a compelling interest in preserving the integrity of its election process.' " *Purcell v. Gonzalez,* --- U.S. ----, ----, 127 S.Ct. 5, 7, 166 L.Ed.2d 1 (2006). As the Supreme Court has noted:

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. "[T]he right of suffrage can be denied by a

> debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

Id. (quoting *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1972)).

c. Extent to Which the State's Interest In Preventing Voter Fraud Makes It Necessary to Burden the Right to Vote

45. Finally, the Court must examine the extent to which the State's interest in preventing voter fraud makes it necessary to burden the right to vote. Plaintiffs argue that the 2006 Photo ID Act is not narrowly tailored to the State's proffered interest of preventing voter fraud because the State Defendants failed to show that any incidents of in-person voter fraud had occurred.[8] Plaintiffs also argue that the State had a number of significantly less burdensome alternatives available to prevent in-person voting fraud, such as the voter identification requirements it previously used and numerous criminal statutes penalizing voter fraud, to discourage voters from fraudulently casting ballots or impersonating other voters. Those arguments, however, presuppose that the Court will apply a strict scrutiny analysis. Because the Court has concluded that the 2006 Photo ID Act does not

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[8] Although Plaintiffs contend that the State Defendants have not proffered admissible evidence as to the interest supporting the 2006 Photo ID Act, Plaintiffs actually bear the burden of proof in this case. In any event, the evidence in the record is sufficient to support a finding that the State Defendants introduced the 2006 Photo ID Act in an effort to prevent fraud in voting.

unduly or significantly burden the right to vote, a strict scrutiny analysis is not appropriate.

46. Rather, the appropriate inquiry is whether the Photo ID requirement is rationally related to the interest the State seeks to further-preventing fraud in voting. The Court finds that the Photo ID requirement is rationally related to that interest.[9] Although Plaintiffs may argue that no documented cases of in-person voter fraud exist in Georgia, "the State is not required to produce such documentation prior to enactment of a law." *Rokita,* 458 F.Supp.2d at 826.

47. Additionally, Plaintiffs complain that any real problem with voting fraud exists in the absentee voting area, and that the State has failed to take steps to address that problem. This argument, once again, presumes that the Court will apply a strict, or heightened, scrutiny analysis. In any event, it is clear that "the legislature has wide latitude in determining the problems it wishes to address and the manner in which it desires to address them." *Rokita,* 458 F.Supp.2d at 829. As the Supreme Court has noted:

> Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The

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[9] In a previous Order, the Court speculated that the Photo ID requirement probably was not even rationally related to the asserted justification of preventing voting fraud. That speculation, however, is not binding on the Court and, frankly, proved to be inaccurate.

> legislature may select one phase of one field and apply a remedy there, neglecting the others.

Williamson v. Lee Optical of Okla., 348 U.S. 483, 489, 75 S.Ct. 461, 99 L.Ed. 563 (1955).

d. Summary

48. For the reasons discussed above, the Court finds that Plaintiffs have not demonstrated that the Photo ID requirement places an undue or significant burden on the right to vote. Additionally, Plaintiffs have failed to demonstrate that the Photo ID requirement is not reasonably related to the State's interest in preventing fraud in voting. For those reasons, the Court finds that Plaintiffs have failed to succeed on the merits of their claim that the 2006 Photo ID Act violates the Equal Protection Clause because it imposes an undue burden on the right to vote.

3. Irreparable Harm

For the reasons discussed *supra* Part III.B., Plaintiffs have failed to show that the 2006 Photo ID Act's Photo ID requirement unduly or significantly burdens the fundamental right to vote. Plaintiffs thus have failed to prove that they or other Georgia voters will suffer irreparable harm if the Court declines to enter a permanent injunction.

C. Threatened Injury to Plaintiffs Weighed Against the Damage to the State

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a permanent injunction. As noted above, Plaintiffs simply have failed to prove that the Photo ID requirement unduly or significantly burdens the right to vote. On the other hand, the State has a compelling interest in preventing fraud in voting, and entering a permanent injunction will greatly interfere with the State's chosen method of protecting that interest. This factor therefore counsels against entering a permanent injunction.

D. Public Interest

As previously noted, most courts do not consider the public interest factor in determining whether a permanent injunction should issue. *Klay,* 376 F.3d at 1092. In any event, a permanent injunction would not serve the public interest. For the reasons discussed above, Plaintiffs simply have failed to prove that the Photo ID requirement unduly or significantly burdens the right to vote. On the other hand, preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes counted in any given election. This factor therefore counsels against granting a permanent injunction.

E. Summary

In sum, the factors for granting permanent injunctive relief do not weigh in favor of Plaintiffs. In particular, Plaintiffs have failed to prove actual success on the merits of their claim that the 2006 Photo ID Act's Photo ID requirement unduly burdens the right to vote. Plaintiffs also have failed to show that they will suffer irreparable harm if the

Court does not grant a permanent injunction, much less that any harm to Plaintiffs outweighs the harm to Defendants that would occur if the Court granted permanent injunctive relief. Additionally, entering a permanent injunction would not serve the public interest. For those reasons, the Court declines to enter a permanent injunction, and finds in favor of the State Defendants on Plaintiffs' undue burden claim.

IV. Conclusion

ACCORDINGLY, the Court **DISMISSES** this case, and **DIRECTS** the Clerk to **CLOSE** this case. The Court **DIRECTS** the Clerk to enter judgment in favor of the State Defendants.

It is so ORDERED, this the 6th day of September 2007.

Harold L. Murphy
UNITED STATES DISTRICT JUDGE

Statutory Provision

O.C.G.A. § 21-2-417.1 provides:

> (a) Each county board of registrars shall provide at least one place in the county at which it shall accept applications for and issue Georgia voter identification cards to registered Georgia electors which shall under state law be valid only for purposes

of voter identification under Code Section 21-2-417 and available only to registered electors of this state. No fee shall be charged or collected for the application for or issuance of a Georgia voter identification card.

(b) No person shall be eligible for a Georgia voter identification card if such person has a valid unexpired driver's license or identification card issued under Code Section 40-5-100.

(c) The Georgia voter identification card shall be captioned 'GEORGIA VOTER IDENTIFICATION CARD' and shall contain a prominent statement that under Georgia law it is valid only as identification for voting purposes. The Georgia voter identification card shall be laminated, shall contain a digital photograph of the applicant, and shall include the following information:

(1) Full legal name;

(2) Address of residence;

(3) Birth date;

(4) Date identification card was issued;

(5) Sex;

(6) Height;

(7) Weight;

(8) Eye Color;

(9) County where the identification card was issued including a county number to be assigned for each county by the Secretary of State; and

(10) Such other information or identification as required by rule of the State Election Board.

(d) The application for a Georgia voter identification card shall elicit the information required under subsection (c) of this Code section and such other information as may be required by rule of the State Election Board. The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute a felony offense under Code Section 16-10-71, relating to the offense of false swearing.

(e) The board of registrars shall require presentation and verification of the following information before issuing a Georgia voter identification card to a person:

(1) A photo identity document, except that a nonphoto identity document is acceptable

if it includes both the person's full legal name and date of birth;

(2) Documentation showing the person's date of birth;

(3) Evidence that the person is registered to vote in this state; and

(4) Documentation showing the person's name and address of principal residence.

(f) A Georgia voter identification card shall remain valid so long as a person resides at the same address and remains qualified to vote. It shall be the duty of a person who moves his or her residence within the State of Georgia to surrender his or her card to the board of registrars of the county of his or her residence; and such person may after such surrender apply for and receive a new card if such person is otherwise eligible under this Code section. It shall be the duty of a person who moves his or her residence outside the State of Georgia or who ceases to be qualified to vote to surrender his or her card to the board of registrars by which it was issued.

(g) The State Election Board shall provide each county board of registrars with the necessary equipment, forms, supplies, and training for the production of the Georgia voter identification cards and shall maintain such equipment.

(h) The State Election Board shall adopt rules and regulations for the administration of this Code section and, without limiting the generality of the foregoing, such rules and regulations may further define or prescribe the types of documentation required under subsection (e) of this Code section.

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No. 08-1231

Supreme Court, U.S.
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In The
Supreme Court of the United States

◆

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Petitioners,

v.

EVON BILLUPS, *et al.*,

Respondents.

◆

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

◆

BRIEF IN OPPOSITION

◆

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QUESTIONS PRESENTED

1.

Did the Court of Appeals properly reject Petitioners' equal protection challenge to Georgia's Photo ID Act based on this Court's decision in *Crawford v. Marion County Election Board*, 553 U.S. ___, 128 S. Ct. 1610 (2008), which just last term upheld a more restrictive photo ID law in Indiana against the same constitutional challenge?

2.

Is the Court of Appeals' decision upholding Georgia's Photo ID Act consistent with the decisions of this Court and other Courts of Appeals, which hold that the legitimate interest of States in preventing voter fraud and preserving public confidence in the integrity of elections outweigh the minimal burden imposed on voters by requiring the presentation of a photo ID when voting in person?

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STATEMENT OF THE CASE

A. Introduction

Less than one year after this Court decided essentially the same issue in *Crawford v. Marion County Election Board*, 553 U.S. ___, 128 S. Ct. 1610 (2008), Petitioners, contrary to this Court's "Considerations Governing Review on Certiorari," seek to raise again the question of whether a State's requirement of the presentation of a government-issued photographic identification when voting in person violates the Equal Protection Clause of the Fourteenth Amendment. *See* Sup. Ct. R. 10. Undoubtedly recognizing the harmony between the decision of the Court of Appeals for the Eleventh Circuit and the *Crawford* conclusion that no equal protection violation exists as well as an absence of conflict among the Circuits concerning this issue, Petitioners allege that the Court of Appeals somehow applied the wrong standard of review in reaching its conforming conclusion. Petitioners not only ignore the facts as developed in an extensive bench trial and misstate the reasoning of the Court of Appeals but also fail to raise any sufficient ground, let alone a "compelling reason," for the Petition to be granted. *See id.*

As the Petition fails to provide the Court with most of the relevant facts (and instead provides a "Statement" that is simply an extension of Petitioners' legal argument), Respondents provide the Court with an actual statement of the facts and proceedings below.

B. Statement of Facts

Both before and after the enactment of Georgia's photo ID law, Georgia's registered voters could exercise their right to vote in one of two ways: (1) by absentee ballot or (2) at the polls. The photo ID law did not alter these methods of voting but changed certain procedures applicable to these processes.

First, both prior and subsequent to the photo ID law, a voter could vote before a primary or general election by absentee ballot submitted through the mail or in person at the registrar's office or absentee ballot clerk's office. *See* 2003 Ga. Laws 517, 537-39, §§ 35 & 36 (codified at O.C.G.A. §§ 21-2-380(b) & -381 (2003)). Prior to the enactment of the photo ID requirement for in-person voting, a registered voter, however, had to assert a specific statutory reason why he or she could not vote in person on the day of the primary or election in order to cast an absentee ballot. *See* 2003 Ga. Laws 517, 537-38, § 35 (codified at O.C.G.A. § 21-2-380(a) (2003)).

As a second option, prior to the enactment of the photo ID law, a registered voter could vote in person at the polls on the day of the primary or election by presenting one of seventeen documents specified in the law.[1] *See* 2003 Ga. Laws 517, 548-49, § 48

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[1] Prior to the enactment of the photo ID law, a voter who cast an absentee ballot in person at the registrar's office also was required to present one of the seventeen forms of identification in order to vote. *See* 2003 Ga. Laws 517, 548-49, § 48 (codified at O.C.G.A. § 21-2-417(a) (2003)).

(codified at O.C.G.A. § 21-2-417(a) (2003)). In addition, a voter could vote without presenting any identification by signing a statement under oath swearing that he or she was the person identified on the elector's certificate. *Id.* (codified at O.C.G.A. § 21-2-417(b) (2003)). Accordingly, prior to 2005, other than reliance on the seventeen forms of identification (not all of which contained a photograph of the individual) or the sworn affidavit of voter, a poll worker in Georgia had no available methodology to verify that the person presenting one of these methods of identification was actually the registered voter whose name appeared on the voter registration list.[2]

In 2005, the Georgia General Assembly amended the State's election laws in two significant respects.

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[2] Although there is no photo ID requirement when voting by mail, to protect against voter fraud, the law requires election officials to take a number of steps to ensure that the person voting by mail is the same person who registered to vote. Upon receiving an absentee ballot application, a registrar or absentee ballot clerk must record the date of receipt and determine the applicant's eligibility to vote. *See* O.C.G.A. § 21-2-381(b)(1). Absentee ballots are mailed to applicants only after eligibility is determined according to law. *See* O.C.G.A. §§ 21-2-381(b)(2)-(4) & -384(a)(2). When the voted ballot is returned, the registrar or clerk is required to compare the identifying information and signature of the voter on the absentee ballot envelope with the voter's identifying information on both the voter registration application and absentee ballot application. *See* O.C.G.A. § 21-2-386(a)(1)(B). The records available at the registrar's office to compare identifying information for a registered voter who casts an absentee ballot are not available to the poll workers on primary or election day.

The first change permitted registered voters to vote an absentee ballot by mail without having to state an excuse for not voting in person on the day of a primary or election. *See* O.C.G.A. § 21-2-380(b). This change simply expanded the opportunity to vote by mail; it did not alter the documentation required to obtain an absentee ballot or require a photo ID to be submitted with the mail-in ballot. *See id.* § 21-2-381(a)(1)(C).

Second, in an effort to protect against in-person voter fraud,[3] the state legislature changed the manner in which registered voters who vote in person could verify their identities. Registered voters who chose to vote in person were required to present one of the following forms of government-issued identification:

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[3] Petitioners attempt to make issue of the facts that Georgia's photo ID law contains no "legislative findings or a statement of legislative purpose" and there was no testimony from members of the legislature as to the intent to prevent voter fraud. *See* Petition at 3. Unlike the United States Congress, which has only delegated powers, the Georgia General Assembly's power is plenary and "is absolutely unrestricted in its power to legislate, so long as it does not undertake to enact measures prohibited by the State or Federal Constitution." *Bryan v. Ga. Pub. Serv. Comm'n*, 238 Ga. 572, 573, 234 S.E.2d 784, 785 (1977) (quoting *Sears v. State*, 232 Ga. 547, 554, 208 S.E.2d 93, 99 (1974)). Moreover, testimony of members of the Georgia General Assembly is inadmissible to explain the reasons for the enactment of specific legislation. *See Jackson v. Delk*, 257 Ga. 541, 543, 361 S.E.2d 370, 372 (1987); *Stewart v. Atlanta Beef Co.*, 93 Ga. 12, 18 S.E. 981 (1893). Finally, unlike the Congress, Georgia has no official legislative history for the enactment of statutes, *Dortch v. Atlanta Journal*, 261 Ga. 350, 355 n.4, 405 S.E.2d 43, 47 n.4 (1991) (Smith, J. dissenting), so the intent of statutes is gleaned from the plain meaning of the words used in light of the "old law," the "evil" the legislature intends to address, and the "remedy" applied by the operation of the new law. *See* O.C.G.A. § 1-3-1(a) & (b).

- a Georgia driver's license issued by the appropriate State agency;
- a valid photo ID card issued by any agency or branch of the United States or any State government agency;
- a valid United States passport;
- a valid employee photo ID card issued by the United States or a Georgia state or county government agency;
- a valid photographic United States military identification card; or
- a valid tribal photo ID card.

O.C.G.A. § 21-2-417(a). An in-person voter unable to produce any of these alternative forms of photo ID would be permitted to vote a provisional ballot, and that ballot would be counted if the registrar was able to verify current and valid identification of the registered voter no later than two days after the polls close. *Id.*

For those voters who did not possess one of the acceptable forms of photo ID and still wished to vote in person, photo ID cards were made available at service centers operated by the Georgia Department of Driver Services ("DDS"). The 2005 photo ID law imposed a fee for such ID cards, but after a federal court entered a preliminary injunction,[4] the state legislature in 2006 repealed the fee provision and provided that photo ID cards would be available free of charge in each county voter registrar office as well as all DDS service centers. *See* O.C.G.A. §§ 21-2-417 & 417.1; *see also id.* § 40-5-103(d).

C. Proceedings Below

On September 19, 2005, a group of non-profit corporations, organizations, and associations, along with two registered voters, filed a complaint against a group of county election officials and Cathy Cox, in her individual and official capacities as Georgia's then-Secretary of State and Chair of the State Election Board.[5] *Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326, 1328 (N.D. Ga. 2005) ("*Common Cause/Ga. I*"). These plaintiffs alleged, in part, that Georgia's photo ID law enacted in 2005 violated the Fourteenth and Twenty-Fourth Amendments to the United States Constitution. *Id.*

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[4] *See infra* page 7.

[5] Shortly after the case was filed, one of the original two registered voters in the federal action dismissed his claims, and the State Election Board was added as a defendant. In addition, after the 2006 general election, Karen C. Handel succeeded Cathy Cox as Secretary of State of Georgia and Chair of the State Election Board. *See Common Cause/Ga. v. Billups*, 504 F. Supp. 2d 1333, 1337-38, 1341 (N.D. Ga. 2007).

On October 18, 2005, the District Court granted the plaintiffs' motion for preliminary injunction and enjoined the enforcement of the 2005 photo ID law. *Common Cause/Ga. I*, 406 F. Supp. 2d at 1377. First, the District Court found that, based solely on the evidence before it on the motion for preliminary injunction, there appeared to be a significant burden on the right to vote. Specifically, the District Court noted its concerns that (1) because the DDS service centers offering the photo ID cards were "not located in every Georgia county," the centers were not readily accessible to those who might need a photo ID to vote in person, *id.* at 1362-63, and (2) the State had not adequately educated voters about the new photo ID law or the changes to the absentee ballot provisions permitting absentee voting by mail without having to provide an excuse, *id.* at 1364. Second, the District Court found that the fee for a photo ID card issued by DDS constituted a poll tax in violation of the Twenty-Fourth Amendment to the United States Constitution. *Id.* at 1369-70.

Following the amendments by the state legislature in 2006 which eliminated the fees charged for photo ID cards and expanded the locations at which such ID cards were available to all 159 Georgia counties ("the 2006 Photo ID Act"), the plaintiffs asserted the same claims against the 2006 Photo ID Act as they raised in their original complaint against the 2005 photo ID law. *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1298 (N.D. Ga. 2006) ("*Common Cause/Ga. II*"). On July 14, 2006, the District

Court granted a preliminary injunction, but only with respect to the July 18, 2006 primary and primary run-off elections. The District Court found that the State's limited efforts to educate voters by running public service announcements two weeks before the primary and distributing a letter at the polls on the day of the primary did not give voters adequate time to become aware of the 2006 Photo ID Act's requirements. *Id.* at 1346. Therefore, the District Court concluded that the plaintiffs had demonstrated a likelihood of success that the 2006 Photo ID Act unduly burdened the right to vote in those specific elections.[6] *Id.* at 1360. The District Court, however, emphasized the limitations on the reach of its order and offered the following guidance:

> In issuing this Order, the Court does not intend to imply that all Photo ID requirements would be invalid or overly burdensome on voters. Certainly, the Court can conceive of ways that the State could impose and implement a Photo ID requirement without running afoul of the requirements of the Constitution. Indeed, if the State allows sufficient time for its education efforts with respect to the 2006 Photo ID Act and if the State undertakes sufficient steps to inform

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[6] The District Court concluded that the plaintiffs had no substantial likelihood of success on the merits of their poll tax or Civil Rights Act claims. *Common Cause/Ga. II*, 439 F. Supp. 2d at 1355, 1357-58.

> voters of the 2006 Photo ID Act's requirements before future elections, the statute might well survive a challenge for such future.

Id. at 1351.

Two months later, on September 15, 2006, the District Court preliminarily enjoined the application of the 2006 Photo ID Act with respect to the September 2006 special elections. *See Common Cause/ Ga. v. Billups*, 504 F. Supp. 2d 1333, 1340-41 (N.D. Ga. 2007) ("*Common Cause/Ga. III*"). Again, the District Court stressed that it was not ruling on any issue other than the appropriateness of a preliminary injunction for the September 2006 special election and reiterated its earlier guidance that if the State allowed sufficient time for its education efforts before an upcoming primary or election, the Act might well survive a constitutional challenge. *Id.* at 1349-50.

The District Court conducted a bench trial on the merits on August 22-24, 2007. At trial, the plaintiffs proceeded solely on their claim that the 2006 Photo ID Act unduly burdened their right to vote in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Id.* at 1342. State defendants, however, offered proof that beginning in early 2007 and up through the time of trial, Georgia's Secretary of State engaged in, as the District Court subsequently concluded, a "serious, concerted effort" to educate the State's voters concerning the requirements of the 2006 Photo ID Act, the availability of free photo ID cards, and the ability to vote absentee by mail without a photo ID. *Id.* at 1365-68, 1380.

By Order dated September 6, 2007, the District Court dismissed the plaintiffs' case in its entirety and directed that judgment be entered in favor of the State defendants. First, the District Court held that the plaintiffs had failed to prove by a preponderance of the evidence that the remaining organizational plaintiff or the recently-added individual plaintiffs[7] had standing to sue. *Id.* at 1371-74. Second, the District Court concluded that even if standing existed and the merits of the action were considered, the 2006 Photo ID Act imposed no undue burden on the right to vote. *Id.* at 1377-80. The District Court found that the plaintiffs failed to produce admissible evidence to establish that the character and magnitude of the asserted injury was significant. *Id.* at 1377. The District Court also found that the State defendants' "exceptional" efforts to educate voters about the requirements of the 2006 Photo ID Act undertaken after the entry of the earlier preliminary injunctions belied the plaintiffs' contention that voters were unaware of those requirements. *Id.* at 1378-79. Given that the plaintiffs "proffered precious little admissible evidence" to support their allegation that the photo ID requirement was burdensome and "failed to uncover anyone" who could attest to the fact that they would be prevented from voting due to that requirement, the District Court held that the 2006 Photo ID Act imposed no undue burden upon the right to vote and that the Act was a reasonable and legitimate enactment to satisfy the State's interest in preventing voter fraud. *Id.* at 1378, 1380-81.

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[7] The District Court dismissed the original remaining individual plaintiff due to lack of standing after the Supreme Court of Georgia dismissed a lawsuit challenging the 2006 Photo ID Act on state constitutional grounds. Like the plaintiff in the state lawsuit, the remaining federal individual plaintiff possessed the same government-issued photo ID which could be used for in-person voting. *See Common Cause/Ga. III*, 504 F. Supp. 2d at 1341; *Perdue v. Lake*, 282 Ga. 348, 647 S.E.2d 6 (2007).

> *Despite apocalyptic assertions of wholesale voter disenfranchisement, Plaintiffs have produced not a single piece of evidence of any identifiable registered voter who would be prevented from voting pursuant to [the 2006 Photo ID Act] because of his or her inability to obtain the necessary photo identification.* Similarly, Plaintiffs have failed to produce any evidence of any individual . . . who would undergo any appreciable hardship to obtain photo identification in order to be qualified to vote.

Id. at 1380 (quoting *Ind. Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 822-23 (S.D. Ind. 2006), *aff'd sub nom. Crawford v. Marion County Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 128 S. Ct. 1610) (alterations in original and emphasis added).

On January 14, 2009, the Court of Appeals for the Eleventh Circuit held that the District Court did not abuse its discretion when it declined to enjoin the enforcement of the 2006 Photo ID Act. *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1355 (11th Cir. 2009) ("*Common Cause/Ga. IV*"). Although the Court of Appeals disagreed with the District Court that the NAACP and individual voters lacked standing to challenge the photo ID requirement, the Court of Appeals concluded that the District Court properly applied the flexible standard from *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), and correctly held that "the burden imposed on Georgia voters who lack photo identification was not undue or significant." *Common Cause/Ga. IV*, 554 F.3d at 1354.

The Court of Appeals agreed with the District Court that the burden imposed upon Georgia voters by the Act was not "undue or significant" and that the inability to locate a single voter who could not obtain a free photo ID card or otherwise vote belied the plaintiffs' claims that the requirements of the law were burdensome. *Id.* Moreover, "[t]he interest of Georgia in detecting and deterring voter fraud is a 'valid neutral justification[ ]' that this Court cannot ignore." *Id.* at 1355 (quoting *Crawford*, 128 S. Ct. at 1624) (brackets in original). Consequently, the Court of Appeals held that the District Court did not abuse its discretion when it denied the plaintiffs' request for a permanent injunction against the enforcement of the Act and rendered judgment in favor of the State's officials. *Id.* at 1355, 1357.

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REASONS FOR DENYING THE PETITION

The decision below does not conflict with a decision of this Court or any Court of Appeals, nor does it implicate an important federal question that has not been decided by this Court. In fact, just last term, this Court in *Crawford v. Marion County Election Board* upheld Indiana's photo ID law for in-person voting against a similar equal protection challenge. Petitioners have not carried their burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

I. The Court of Appeals Properly Upheld Georgia's Photo ID Law Based on This Court's Recent Decision in *Crawford v. Marion County Election Board.*

The Court of Appeals properly rejected Petitioners' challenge to Georgia's 2006 Photo ID Act based on this Court's decision last term in *Crawford v. Marion County Election Board*, 553 U.S. ___, 128 S. Ct. 1610 (2008). In *Crawford*, this Court upheld a more restrictive Indiana photo ID law against the same equal protection challenge at issue in this case. Petitioners attempt to distinguish *Crawford* by emphasizing that the record is more complete in this case because a trial on the merits occurred as opposed to a ruling on summary judgment. However, the completeness of this record and the lack of any evidence to establish a significant burden upon the right to vote underscores why *Crawford* is equally dispositive of the issues here.

First, this Court noted in *Crawford* that the plaintiffs had not presented a single voter who had been harmed by the photo ID law. *See* 128 S. Ct. at 1614 (noting that the district judge found that the plaintiffs had "not introduced evidence of a single, individual Indiana resident who will be unable to vote as a result of SEA 483 or who will have his or her right to vote unduly burdened by its requirements"). After two years of litigation in the District Court and a full trial on the merits, the evidence in this case suffered from the same lack of actual harm to any voter. *See Common Cause/Ga. IV*, 554 F.3d at 1354 (stating that Petitioners, "despite their best efforts, failed to identify a single individual who would be unable to vote because of the Georgia statute or who would face an undue burden to obtain a free voter identification card").

The only alleged harm to any registered voters was that if they exercised their right to vote in person, as opposed to voting absentee by mail, they would be required to obtain a free photo ID card if they did not already possess an otherwise qualifying photo ID. As this Court explained in *Crawford*, "the inconvenience of making a trip to the [appropriate government agency], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Crawford*, 128 S. Ct. at 1621; *see Common Cause/Ga. III*, 504 F. Supp. 2d at 1377-78, 1380-81 (addressing the ability of each of the individual Petitioners and two additional trial witnesses to obtain a photo ID without difficulty).

Second, both at trial and in their Petition, Petitioners contended that "hundreds of thousands" of Georgia voters lack a driver's license, *see* Petition at 17-18, but, as the Court of Appeals explained, the data match inquiry that produced a list of voters who allegedly lacked driver's licenses was seriously flawed. *See Common Cause/Ga. IV*, 554 F.3d at 1354 ("The data relied on by the NAACP and voters are incomplete and unreliable. The data matches fail to account for other forms of identification that are acceptable under the statute, including the free voter identification cards."). The data relied upon by Petitioners also contained numerous inaccuracies in which persons with driver's licenses (including the District Judge) erroneously appeared on the data match list as not having a driver's license. *See id.* Just as in *Crawford*, Petitioners here have failed to provide any evidence of "the number of registered voters without photo identification," and this Court has stressed that mere supposition cannot substitute for actual "concrete evidence" of a real "burden imposed on voters who currently lack photo identification." 128 S. Ct. at 1622.

Third, Petitioners attempt to distinguish *Crawford* by saying that there was no record evidence in that case of discriminatory impact of African-Americans. *See* Petition at 18. That distinction, however, cannot be made because, in fact, Petitioners' case also lacked any admissible evidence on that issue. *See Common*

Cause/Ga. IV, 554 F.3d at 1354 (noting that Petitioners argued that the statute affects "between 5 and 10 percent of all registered voters, largely minorities, *but the record tells a different story*") (emphasis added).

Indeed, in addition to not identifying a single individual – of any race – who would be prevented from voting, *see id.*, the District Court found the testimony of Petitioners' expert witness on the issue of discriminatory impact to be so unreliable that the court excluded it pursuant to this Court's precedent in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny. *See Common Cause/ Ga. III*, 504 F. Supp. 2d at 1371, 1378.

Finally, Petitioners contend that the political party-line vote for passage of Georgia's photo ID law supports the granting of their Petition, notwithstanding that in *Crawford* this Court explained that partisanship provided no basis for overturning the Indiana statute. *See Crawford*, 128 S. Ct. at 1624. Petitioners' argument that the Georgia photo ID law was enacted for partisan advantage is no different than the one raised in *Crawford.* In rejecting this argument, the Court of Appeals expressly applied this Court's analysis from *Crawford*:

> The NAACP and voters also argue that the statute was "adopted to gain partisan advantage," but the Supreme Court dismissed the relevance of partisan interests in *Crawford.* "[I]f a nondiscriminatory law is supported by valid neutral justifications, those justifications should not be disregarded simply

> because partisan interests may have provided one motivation for the votes of individual legislators." The interest of Georgia in detecting and deterring voter fraud is a "valid neutral justification[ ]" that this Court cannot ignore.

Common Cause/Ga IV, 554 F.3d at 1355 (quoting *Crawford*, 128 S. Ct. at 1623-24) (brackets in original and internal citations omitted).

In contrast to Petitioners' lack of admissible evidence regarding the Georgia photo ID law's burden on the State's voters, the State of Georgia undertook great efforts to ensure that no one is prevented from voting because of the photo ID law. In fact, Justice Breyer's dissent from the *Crawford* decision itself recounts these efforts and recognizes that there is a lesser burden imposed by the Georgia law than by the Indiana law. 128 S. Ct. at 1644-45. As Justice Breyer explained, "[b]y way of contrast, . . . Georgia [has] put into practice photo ID requirements *significantly less restrictive* than Indiana's." *Id.* at 1644 (emphasis added).

Justice Breyer cited four major examples to support his conclusion. Initially, Justice Breyer noted that Georgia "accepts in addition to proof of voter registration a broader range of underlying documentation than does Indiana." *Id.* (citing O.C.G.A. § 21-2-417 and Ga. Comp. Rules & Regs. 183-1-20.01). Justice Souter's dissent in *Crawford*, joined by Justice Ginsburg, likewise recognizes that the burdens of obtaining photographic identification are less in

Georgia than Indiana because one can obtain a Georgia voter identification card even without presentation of a birth certificate. *See id.* at 1635 n.26 ("Only one other State, Georgia, currently restricts voters to the narrow forms of government-issued photo identification. But a birth certificate is not needed to get a Georgia voter identification card.") (citing O.C.G.A. §§ 21-2-417 & -417.1 and Ga. Comp. Rules & Regs. 183-1-20.01).

Second, no person lacking a photo ID is prohibited from voting in Georgia because Georgia has no-excuse-required absentee voting, and any Georgia voter can vote absentee by mail without needing to present photographic identification. As Justice Breyer explained, "[w]hile Indiana allows only certain groups such as the elderly and disabled to vote by absentee ballot, *in Georgia any voter may vote absentee without providing any excuse*, and (except where required by federal law) *need not present a photo ID* in order to do so." *Id.* at 1645 (emphasis added).

Third, Indiana law provides that, although "[a] voter who is indigent . . . may cast a provisional ballot," the ballot "will be counted only if she executes an appropriate affidavit before the circuit court clerk within 10 days following the election." *Id.* at 1613-14 (citing Ind. Code Ann. §§ 3-11.7-5-1 & -2.5(c)). Justice Breyer noted that, in contrast, "Georgia [does not] insist[ ], as Indiana does, that indigent voters travel each election cycle to potentially distant places for the purposes of signing an indigency affidavit." *Id.* at 1645.

Fourth, Justice Breyer emphasized the District Court's finding of Georgia's "serious, concerted effort to notify voters who may lack Photo ID cards of the Photo ID requirement, to inform those voters of the availability of free [State-issued] Photo ID cards or free Voter ID cards, to instruct the voters concerning how to obtain the cards, and to advise the voters that they can vote absentee by mail without a Photo ID." *Id.* (quoting *Common Cause/Ga. III*, 504 F. Supp. 2d at 1380) (brackets in original).

This case, when compared with *Crawford*, shows that the same issues decided there are again being brought before this Court by the Petition. Indeed, when the actual evidence from the bench trial is considered, the establishment of the lack of any significant burden among registered voters by the implementation of Georgia's photo ID law is even stronger than the evidence which led this Court to uphold Indiana's photo ID law in *Crawford*.

II. The Court of Appeals' Decision Is Consistent With the Decisions of This Court and Other Courts of Appeals Which Establish That a State's Legitimate Interest in Preventing Voter Fraud Outweighs the Minimal Burden Imposed on Voters by a Photo ID Requirement for In-Person Voting.

Anderson v. Celebrezze, 460 U.S. 780 (1983), provides that Petitioners initially must demonstrate actual harm, and a court must first consider the "character and magnitude" of the asserted injury. *Id.* at 789. Petitioners provided the District Court with a paucity of admissible evidence that Georgia's 2006 Photo ID Act imposed any burden upon voting, other than the minimal burden that some individuals who desired to vote in person and lacked a photo ID would need to visit their county elections registrar or a DDS office to obtain a free photo ID card.

In fact, notwithstanding Petitioners' statement that "the decisions of a court must be based on admissible evidence in the record, and not [on] unproven assumptions or hearsay," the allegations on which they rely throughout their Petition are not the admissible evidence presented at trial, but rather consist of what was presented at the preliminary injunction hearings and ultimately was shown at trial not to be correct. *See* Petition at 9, 11-14 & 17-19. As the District Court noted in its decision following the bench trial:

> Although Plaintiffs contended at the preliminary injunction hearings that many voters

> who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a voter registrar's office or DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain Voter ID cards or Photo ID cards, or cannot travel to a registrar's office or a DDS service center during those locations' usual hours of operation because the voters do not have transportation available, *Plaintiffs failed to produce admissible evidence to that effect at trial.*

Common Cause/Ga. III, 504 F. Supp. 2d at 1377 (emphasis added). Moreover, the District Court noted that some of the very statements in its preliminary injunction orders on which Petitioners rely, *see* Petition at 11, were "speculation . . . not binding on the Court" that "frankly, proved to be inaccurate."[8] *Id.* at 1381 n.9.

Notwithstanding Petitioners' assertions of hundreds of thousands of voters who lack photo ID for in-person voting, the only evidence that Petitioners presented of any harm caused by the 2006 Photo ID Act was testimony of four individuals – two individual Petitioners who testified at trial and two other witnesses who testified by deposition – all of whom said they could obtain a free photo ID card for voting without much difficulty.

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[8] Additionally, Petitioners' statement that the District Court's factual findings at the preliminary injunction hearings "were based on testimony and documents that would have been 'admissible at trial' and were a 'part of the record,'" Petition at 12 n.2 (citing Fed. R. Civ. P. 65(a)), is not correct. The District Court itself noted that the declarations of several Georgia voters who lacked photo ID cards, which Petitioners proffered in connection with the 2005 and 2006 preliminary injunction hearings, were hearsay that had not been rendered admissible at trial. *See Common Cause/Ga. III*, 504 F. Supp. 2d at 1351.

For example, one of the individual Petitioners said that her family and friends often drive her wherever she needs to go and could drive her to her county registrar's office to get a free photo ID card for voting, and she would, in fact, get a free photo ID card for voting if the law was upheld. *See id.* at 1348-49, 1377-78. The second individual Petitioner said he has not voted in over twenty years, but his daughter or a friend drives him where he needs to go, and his daughter would drive him to his polling place if he voted again, which is about the same distance from his home as his county registrar's office where he can obtain a free photo ID card for voting. *See id.* at 1350-51, 1377-78. He also said his daughter could assist him with voting an absentee ballot. *See id.* at 1350. One of the other witnesses said that she was able to drive with family or friends to obtain a free photo ID card, and the final witness said that he could walk to his county registrar's office only one-quarter mile away without hardship to obtain a free photo ID card for voting. *See id.* at 1351-54, 1377-78.

Accordingly, the only admissible evidence that Petitioners provided at trial was that four Georgia registered voters would simply be required to obtain a free photo ID card for voting in a one-time trip to their county voter registrar's office.[9] This Court explained in *Crawford* that "the inconvenience of making a trip to the [appropriate government agency], gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Crawford*, 128 S. Ct. at 1621.

Judged against this minimal burden to voters is the State of Georgia's compelling interest in preserving the integrity of its elections and protecting against voter fraud. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989)) ("A State indisputably has a compelling interest in preserving the integrity of its election process."), *quoted in Common Cause/Ga. III*, 504 F. Supp. 2d at 1381. As this Court has explained:

> Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as

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[9] Georgia has 159 counties, more than any other State except Texas.

> effectively as by wholly prohibiting the free exercise of the franchise."

Purcell, 549 U.S. at 4 (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)), *quoted in Common Cause/Ga. III*, 504 F. Supp. 2d at 1381; *see Crawford*, 128 S. Ct. at 1619 ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters.").

Without any support, Petitioners argue for an increased standard to support a State's justification for enacting a photo ID law. However, this Court in *Crawford* upheld Indiana's photo ID law despite the fact that the Indiana statute addressed only in-person voter impersonation at the polls when "[t]he record contain[ed] *no evidence of any such fraud actually occurring in Indiana at any time in its history*." 128 S. Ct. at 1619 (emphasis added). Moreover, based on the facts of this case, the District Court specifically found that "the evidence in the record is sufficient to support a finding that [Respondents] introduced the 2006 Photo ID Act in an effort to prevent fraud in voting." *Common Cause/Ga. III*, 504 F. Supp. 2d at 1381 n.8.

As the Court of Appeals explained in applying this Court's precedent from *Crawford*, *Anderson*, and *Burdick*, although the State of Georgia must identify the interests that it seeks to further, no actual evidentiary showing is required:

> *Anderson* requires a state to "identif[y the] . . . interests that it seeks to further by its"

> regulation, but *Anderson* does not require any evidentiary showing or burden of proof to be satisfied by the state government. In *Anderson*, the Supreme Court considered the interests posited by Ohio – voter education, equal treatment of all candidates, and political stability – but did not discuss any record evidence in support of those stated interests. Nor do the more recent decisions in *Burdick* and *Crawford* place an evidentiary burden on the state when defending a voting regulation.

Common Cause/Ga. IV, 554 F.3d at 1353 (brackets and ellipsis in original and citations omitted).

This Court "did not require Indiana to prove specific instances of voter fraud" in *Crawford*, and there likewise is no basis to place such a requirement on Georgia in this case. *Id.* In fact, this Court has emphasized:

> Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *The legislature may select one phase of one field and apply a remedy there, neglecting the others.*

Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 489 (1955) (emphasis added and citations omitted). As the Court stated in *Crawford*, "[w]hile the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear." *Crawford*, 128 S. Ct. at 1619.

Additionally, Georgia has put into place several procedures to mitigate any burden that the photo ID requirement might impose. First, individuals without a photo ID for in-person voting can vote absentee by mail without having to provide an excuse why they cannot vote on the day of the primary or election. *Common Cause/Ga. III*, 504 F. Supp. 2d at 1379; *see Crawford*, 128 S. Ct. at 1645 (Breyer, J., dissenting) ("[I]n Georgia any voter may vote absentee without providing any excuse, and (except where required by federal law) need not present a photo ID in order to do so."). Second, State defendants presented evidence at trial of their "serious, concerted effort" to educate voters about the photo ID requirement, which Justice Breyer's dissent in *Crawford* references in distinguishing Georgia's law from Indiana's. *Common Cause/Ga. III*, 504 F. Supp. 2d at 1380, *quoted in Crawford*, 128 S. Ct. at 1645. Third, anyone in Georgia who shows up at the polls on an election day without a valid photo ID can vote a provisional ballot. *Common Cause/Ga. III*, 504 F. Supp. 2d at 1344 (quoting O.C.G.A. § 21-2-417(b)); *see Crawford*, 128 S. Ct. at 1621 ("The severity of that burden is, of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted.").

In short, as the Court of Appeals recognized, the "insignificant burden" that the Georgia photo ID law imposes is outweighed by the State's interest in preserving the integrity of its elections and the serious efforts that the State has taken to mitigate even the minimal burden of the law:

> The insignificant burden imposed by the Georgia statute is outweighed by the interests in detecting and deterring voter fraud. Because the burden on Georgia voters is "slight," the state interest need not be "compelling . . . to tip the constitutional scales in its direction." The legitimate state interest in preventing voter fraud, as recognized in *Crawford*, is more than "sufficient to outweigh the limited burden" of producing photo identification.

Common Cause/Ga. IV, 554 F.3d at 1354-55 (quoting *Burdick*, 504 U.S. at 439-40) (ellipsis in original).

Petitioners have failed to state a compelling reason why their Petition should be granted. *See* Sup. Ct. R. 10. The Court of Appeals properly analyzed and rejected Petitioners' challenge to the 2006 Photo ID Act based on this Court's holding in *Crawford*. To grant this Petition would both alter the role of this Court in reviewing decisions of the Courts of Appeals and violate the most basic notions regarding the importance of evidence, not mere unproven allegations, in our system of jurisprudence.

◆

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,
Petitioners,

v.

EVON BILLUPS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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PARTIES TO THE PROCEEDINGS BELOW

The Petitioners are The National Association for the Advancement of Colored People (NAACP), Inc., through its Georgia State Conference of Branches; Eugene Taylor; and Bertha Barrett Young. The following were plaintiffs in the proceedings below until August 24, 2007, and are not Petitioners: Common Cause/Georgia; League of Women Voters of Georgia, Inc.; Central Presbyterian Outreach and Advocacy Center, Inc.; Georgia Association of Black Elected Officials, Inc.; Georgia Legislative Black Caucus; Concerned Black Clergy of Metropolitan Atlanta, Inc.; Tony Watkins; and Clara Williams.

The Respondents are Ms. Evon Billups, Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County and the City of Rome, Georgia; Ms. Tracy Brown, Superintendent of Elections of Bartow County, Georgia; Mr. Gary Petty, Member of the Board of Elections and Registration of Catoosa County, Georgia; Ms. Michelle Hudson, Member of the Board of Elections and Registration of Catoosa County, Georgia; Ms. Amanda Spencer, Member of the Board of Elections and Registration of Catoosa County, Georgia; Cathy Cox, former Secretary of State of Georgia and former Chair of the Georgia Election Board in her individual capacity; Karen C. Handel, individually, and in her official capacity as Secretary of State of Georgia and Chair of the Georgia Elections Board; and the State Election Board. All Respondents were defendants below.

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REPLY BRIEF FOR THE PETITIONERS

The State has ignored Rule 10(c) in its opposition. Rule 10(c) provides for review by certiorari when a "court of appeals ... has decided an important federal question in a way that conflicts with relevant decisions of this Court."

In ruling that "*Anderson* does not require any evidentiary showing or burden of proof to be satisfied by the state government...." (554 F.3d at 1353), the court of appeals plainly did not apply the heightened sliding scale standard of review mandated by *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), *Norman v. Reed*, 502 U.S. 279, 288-89 (1992), *Burdick v. Takushi*, 504 U.S. 428, 434(1992), and most recently in *Crawford v. Marion County Bd. of Elections*, 553 U.S. __, 128 S. Ct. 1610, 1616 (2008). The ruling also conflicts directly with the line of cases represented by *Harris v. McRae*, 448 U.S. 297, 312 (1980), cited at pages 7-8 of the petition, which hold that, unlike other statutes, statutes that infringe fundamental rights are presumed to be unconstitutional and the burden is on the state to prove that the burden imposed by such statutes is both necessary and justified.

The state is also incorrect in asserting that all issues concerning the validity of state photo ID statutes were conclusively resolved in favor of such statutes in *Crawford*. The State has continued to ignore the fact that the three justices who concurred in the lead opinion in *Crawford* stated repeatedly that they were voting to uphold the Indiana photo ID act ***only*** as against a purely facial challenge to its validity. 128 S. Ct. at 1615 ("[T]he evidence in the record is not sufficient to support a facial attack on the validity of the entire statute, and thus we affirm."). *See also Id.* at 1623.

The state argues that the Indiana statute was "more restrictive" than the Georgia act. That is only a half-truth, and is irrelevant. *Crawford* held that any burden, however slight, must be justified. *Id.* at. 1616.[1]

The State further argues that the Georgia voters who do not have a photo ID are not denied the right to vote because they have the option of casting an absentee ballot which requires no photo ID. The district court specifically found based on testimony at a preliminary injunction hearing, however, "that absentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID." *Common Cause v. Billups*, (*Common Cause I*) 406 F. Supp. 2d 1326, 1365 (N.D. Ga. 2005), and *see Id.*, n. 7 ("Georgia's Photo ID requirement places the burden of voting absentee on the very class of voters who will be least likely to navigate that method of voting successfully."). Moreover, the relevant question under *Anderson* is not whether the Georgia act denies any voter the right to vote, but whether the act imposes an "undue burden" on their right to vote that is not "justified" by a legitimate state interest that made it "necessary" to burden the voters' rights. *Anderson,* 460 U.S. at 789.

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[1] While Georgia allows voters to use a wider range of documents to obtain a voter ID than Indiana, the Indiana statute gives those who cast provisional ballots ten days to produce a photo ID; in contrast, the Georgia statute allows those who cast provisional ballots only two days to obtain a voter ID to have their provisional ballots counted. In Indiana, residents of nursing homes are allowed to vote on site without a photo ID; the Georgia act contains no similar exception. In Indiana, voters who are indigent can cast a ballot without a photo ID by completing an affidavit of indigency; Georgia law does not contain a comparable indigency exemption from its photo ID requirement.

The State places great emphasis, as did the district court, on the fact that the Secretary of State (at the district court's urging) conducted an "educational" campaign to inform voters that they would not be allowed to cast ballots in person at the polls without a photo ID. This argument misses the point. While absence of fair notice would be an additional ground for challenging an otherwise valid photo ID requirement, no amount of notice can validate a photo ID requirement that is not necessary, or which was enacted for an improper and purely partisan purpose to discourage poor, elderly and minority voters from voting.

Finally, the State's assertion that there was no record evidence that the Georgia photo ID requirement has an adverse impact on hundreds of thousands of registered voters, a disproportionate share of whom are African-American, is demonstrably untrue. While it is true, as the district court found, that the initial data match that was prepared in 2006 by the Department of Driver Services at the request of then Secretary of State Cathy Cox contained errors (including the name of the district judge himself) (*Common Cause v. Billups* (*Common Cause IV*), 504 F. Supp. 2d 1333, 1361-62 (N.D. Ga. 2007) (Findings # 133-136), that was not true of the subsequent data match on which both the State and Petitioners relied at the permanent injunction hearing. That subsequent data match was prepared a year later by the State DDS at the request of Republican Secretary of State Karen Handel, and the Republican-controlled State Election Board, and this later more reliable data-match is the one that was introduced at the final hearing by both the Petitioners (PX 99) and by the State Defendants (DX 38). *Common Cause IV*, 504 F.Supp.2d at 1361-62 (Findings # 140-151).

CONCLUSION

This case presents a question of compelling importance: Whether a state has any burden to prove that the burden imposed on voters by a photo ID requirement is both "justified by relevant and legitimate state interests" that are both (1) "sufficiently weighty" (*Crawford*, 128 S. Ct. at 1616) to outweigh its impact on voters, and (2) make it "necessary" to burden the plaintiffs' rights (*Anderson*, 460 U.S. at 789 emphasis added – or, whether, as the court of appeals held, a state is not required to make "any evidentiary showing or [carry any] burden of proof" (554 F.3d at 1353). The answer to this question will dictate the outcome of future challenges to photo ID statutes that are now being proposed as partisan measures in other states.

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